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CONFIRMATION HEARINGS ON FEDERAL APPOINTMENTS

HEARINGS

BEFORE THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

ONE HUNDRED FIRST CONGRESS

FIRST SESSION

ON

CONFIRMATION HEARINGS ON APPOINTMENTS TO THE FEDERAL JUDICIARY

NOVEMBER 7, 9, AND 15, 1989

Part 3

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CONFIRMATION HEARING ON: JOHN M. WALKER, EDWIN L. NELSON, G. THOMAS VAN BEBBER, AND SUSAN WEBBER WRIGHT

TUESDAY, NOVEMBER 7, 1989

U.S. SENATE,
COMMITTEE ON THE JUDICIA.. ,
Washington, DC.

The committee met, pursuant to notice, at 2:30 p.m., in room SD-226, Dirksen Senate Office Building, Hon. Howell Heflin, presiding.

Also present: Senators Thurmond and Simpson.

OPENING STATEMENT OF SENATOR HEFLIN

Senator HEFLIN. The hearing will come to order. We apologize for the delay, but the Democratic caucus extended a rather long-time past when it was supposed to be over with. But we have a number of nominations, and we will consider four today. John M. Walker, Jr., has been nominated to be the U.S. circuit judge for the second circuit, and since 1985 he has served as the U.S. District judge for the southern district of New York.

Edwin L. Nelson has been nominated for the U.S. district court for the northern district of Alabama He received an L.L.B. in 1969 from the Cumberland School of Law at Samford University in Birmingham. Following graduation from law school, Mr. Nelson was in the private practice of law from 1969 to 1974, and since 1974 has served as U.S. magistrate in the U.S. District Court for the Northern District of Alabama.

We have heard from several Alabama attorneys who have had a significant practice in Magistrate Nelson's court for many years, and all conveyed very favorable reviews of his skills and temperament. In addition, Magistrate Nelson was rated qualified by a unanimous vote of the American Bar Association Standing Committee, and I am also of the impression that Magistrate Nelson would make a fine district court judge, and I support his nomination.

George Thomas Van Bebber has been nominated for the U.S. District Court from the District of Kansas. Since 1982 he has served in the position of U.S. magistrate for the U.S. District Court, District of Kansas.

Susan Webber Wright has been nominated for the U.S. District Court for the Eastern and Western District of Arkansas. From 1976 till the present she has been at the University of Arkansas at Little Rock serving as a full professor since 1983. Having reviewed the qualifications of these candidates, I am confident that if appointed they will successfully fulfill the duties of their prospective roles in the Federal judiciary. I congratulate the nominees and look forward to hearing their testimony before the committee.

Senator Thurmond, do you have an opening statement?

Senator THURMOND. Very briefly.

Senator HEFLIN. All right.

OPENING STATEMENT OF SENATOR THURMOND

Senator THURMOND. Thank you, Mr. Chairman. Mr. Chairman, first I would like to take this opportunity to express my appreciation to you for adding Judge John Walker to today's confirmation hearing agenda. Judge Walker is currently a U.S. District Court judge for the Southern District of New York. I have reviewed his record, and he is well qualified for elevation to the circuit bench.

Judge Walker was nominated on September 21, 1989, and was previously scheduled for a hearing on November 15, 1989. As you know, the majority leader has announced his intention to recess later this month, and I would like to see the Committee consider Judge Walker's nomination along with the others here today before we go into recess. Mr. Chairman, once again I appreciate your adding Judge Walker to today's agenda.

Senator HEFLIN. Well, as we customarily do, we will first hear from Senators and members of the House of Representatives who wish to introduce their nominees to the Committee, and then of course they can be excused. Many of them have many things to do and cannot stay during the entire time. First on my list that has been given to me is the Senator from New York. Senator D'Amato is here, and perhaps maybe Senator Moynihan—well, they say he will not be able to be here.

Senator D'Amato, you want to introduce Judge Walker?

STATEMENT OF HON. ALFONSE M. D'AMATO, A U.S. SENATOR FROM THE STATE OF NEW YORK

Senator D'AMATO. Mr. Chairman, in the interest of time and recognizing the number of other distinguished nominees that the President has put forth to this committee, I am going to ask that my entire statement be submitted as if read in its entirety, and just simply say, Mr. Chairman, that I have been privileged to know the nominee for about 9 years now, first having met him as the Assistant Secretary of Treasury in charge of enforcement where he undertook a valuable role in beginning to bring together the various agencies under his control, Customs, IRS, et cetera, began to focus in on the problems of money laundering, and did an extraordinary job in terms of combating the money launderers, making Customs an agency that began to respond in the war against drugs.

He was nominated by President Reagan as a Federal judge in the district court where he has served with great distinction. He brings not only his past 9 years of service but 5 years of service as an assistant U.S. attorney in the southern district. When we talk about people of skill, of tenacity, of integrity, John Walker epitomizes those. And Mr. Chairman, I am delighted and pleased to be able to recommend this nominee and say that the President has certainly demonstrated the highest of traditions by placing John Walker's name as the Circuit Court judge in the Second District. He has distinguished himself. We have every reason to believe that he will continue to do just that.

[Statement of Senator D'Amato follows:]

STATEMENT FOR JUDGE JOHN M. WALKER JR.

NOVEMBER 7, 1989

COMMITTEE ON THE JUDICIARY

DEAR MR. CHAIRMAN:

I AM DELIGHTED TO INTRODUCE JUDGE JOHN M. WALKER JR. TO THE COMMITTEE AS A PRESIDENTIAL NOMINEE FOR THE 2ND CIRCUIT COURT OF APPEALS WITH COMPLETE CONFIDENCE IN THE JOB THAT HE HAS DONE AS A DISTRICT JUDGE AND THROUGHOUT HIS LEGAL CAREER.

GRADUATING FROM YALE UNIVERSITY AND THE UNIVERSITY OF MICHIGAN LAW SCHOOL, JUDGE WALKER EVEN HAD THE GOOD SENSE TO ATTEND THE MAXWELL SCHOOL OF PUBLIC ADMINISTRATION AT MY OLD ALMA MATER, SYRACUSE UNIVERSITY, IN A PUBLIC SERVICE FELLOWSHIP.

MORE IMPORTANTLY, HOWEVER, IS THE DISTINCTION HE HAS BROUGHT TO EVERY PURSUIT IN WHICH HE HAS BEEN ENGAGED -AS STATE COUNSEL TO THE ATTORNEY GENERAL TO THE REPUBLIC OF BOTSWANA, AS A PRIVATE LAWYER, AS A 5 YEAR VETERAN ASSISTANT U.S. ATTORNEY IN NEW YORK'S SOUTHERN DISTRICT, AND AS AN ASSISTANT SECRETARY OF THE TREASURY FOR ENFORCEMENT AND OPERATIONS.

ALL OF THESE HAVE SERVED AS SUPERB EXAMPLES OF THE DEDICATION AND EXPERTISE AND DEMEANOR OF JUDGE WALKER AS A FAIR-MINDED, OBJECTIVE AND ARTICULATE DEFENDER OF THE JUDICIAL SYSTEM. ALL OF THAT PAST SERVICE HAS ADDED TO THE LUSTER OF HIS LAST 4 YEARS AS A SITTING DISTRICT JUDGE IN ONE OF THE MOST ACTIVE JURISDICTIONS IN THIS COUNTRY. HE HAS BEEN A PROSECUTOR, A DEFENSE ATTORNEY, AND A JUDGE; IN SHORT, HE HAS A WELL-ROUNDED EXPERIENCE IN ALL ASPECTS OF THE LAW.

I WAS DELIGHTED TO ENCOURAGE HIS NOMINATION TO HIS CURRENT POST AND CAN RECOMMEND WITH THE HIGHEST ENTHUSIASM THAT HE SUCCEED TO THE 2ND CIRCUIT COURT OF APPEALS.

I AM SURE THAT YOUR DIALOG WITH HIM TODAY WILL CONVINCE YOU THAT MY CONFIDENCE AND THAT OF THE PRESIDENT ARE WELL PLACED. THANK YOU FOR YOUR CONSIDERATION AND COURTESY MR. CHAIRMAN.

Senator **HEFLIN**. Thank you, Senator D'Amato. You can be excused, and Judge Walker, if you will come back later, we will ask you some questions.

Mr. **WALKER**. I will, Mr. Chairman.

Senator **HEFLIN**. Next is Magistrate Nelson. Senator Shelby and Congressman William Dickinson, you all come forward, and maybe Senator Shelby will be here in a moment, and Congressman Dickinson, if you will go ahead.

STATEMENT OF HON. WILLIAM L. DICKINSON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ALABAMA

Mr. **DICKINSON**. Thank you, Mr. Chairman, and to both my distinguished friends here, it is a pleasure for me to appear today on behalf of my friend Ed Nelson, whom I have known over 25 years, a long time. He served with distinction as U.S. magistrate in Birmingham for the past 15 years, having celebrated his anniversary in that position just on October 14. During his years of service, Ed has gained the respect of lawyers who have practiced before him and the judges with whom he has consulted. When Gov. Guy Hunt and Congressman Callahan and I recommended Ed to the White House, we did not have one single negative word or comment spoken against him.

In today's political arena, that alone is quite an accomplishment, I might add. Subsequently, Ed was given high marks by the Bar Association so he must have been doing something right. Ed has served honorably and he has served well, and he is fully prepared to become the U.S. district judge for the Northern District of Alabama by virtue of his experience and his temperament.

I am confident that at the conclusion of this hearing, you will express confidence in Ed's nomination also. And in chatting with Ed just before the commencement of the meeting, I commented to him that I had known a lot of Federal judges, and I admonished him as difficult as it would be to always attempt to keep his humility. I remember when I was practicing and later when I was on the bench, and I was talking to a colleague of mine, whom you know, Senator Heflin. And I said, you know, it is very difficult sometimes for Federal judges. Sometimes they think they sit at the right hand of God, and my colleague practicing variously in Opelika said, yeah, and sometimes they get the chairs mixed up.

So I have known Ed, and I know that he is down to earth. He will do a good job, and it is a real pleasure for me to be here to champion him in this regard and to present him to this distinguished tribunal. I thank the gentlemen.

Senator **HEFLIN**. Thank you. Next are Senator Dole and Senator Kassebaum, if you will come forward with your nominee, and we will be glad to hear from you.

STATEMENT OF HON. NANCY LANDON KASSEBAUM, A U.S. SENATOR FROM THE STATE OF KANSAS

Senator **KASSEBAUM**. Thank you, Mr. Chairman. I think Senator Dole is on his way. So, briefly, I may just go ahead and say it is a great pleasure and honor to introduce to you Judge Tom Van Bebber. President Bush, I think, has made an excellent choice in nominating him for district judge for the State of Kansas. Judge Van Bebber has served as U.S. magistrate for Kansas since 1982, and has built over a long period of time a distinguished career in both private practice and public service.

I have admired him and known him for some time since he was in the Kansas Legislature. Prior to that he was a county attorney. He has gone on and then was chairman of the Kansas State Corporation Commission for 4 years, and then is serving as magistrate now. I think that certainly you, Mr. Chairman, and Senator Thurmond, are examples of two who care a great deal about the excellence and quality of our judicial system. You have both been tenacious champions of that in looking at the qualifications of nominees. And I can think of no finer example of one who represents the integrity and the confidence of both the bar and the bench than Judge Van Bebber, and it is with great pride that I present him to you today.

Senator HEFLIN. Thank you. We appreciate——

Senator KASSEBAUM. Is Senator Dole going to——

Senator HEFLIN. Well, if he comes in we will be glad to take him out of order and accommodate him.

Senator KASSEBAUM. Thank you, Mr. Chairman.

Senator HEFLIN. Our next nominee is Ms. Susan Wright, to be introduced by Senator Bumpers, Senator Pryor, and John Paul Hammerschmidt, a Congressman from Arkansas. Well, we are glad to see that the Arkansas delegation is intact. Senator Bumpers.

STATEMENTS OF A PANEL, CONSISTING OF HON. JOHN PAUL HAMMERSCHMIDT, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ARKANSAS; HON. DALE BUMPERS, A U.S. SENATOR FROM THE STATE OF ARKANSAS; AND HON. DAVID PRYOR, A U.S. SENATOR FROM THE STATE OF ARKANSAS

Senator BUMPERS. Mr. Chairman, if I may at this point, I would like on behalf of myself and my colleague, Senator Pryor, to defer to our distinguished colleague from the House of Representatives, Congressman Hammerschmidt.

STATEMENT OF MR. HAMMERSCHMIDT

Mr. HAMMERSCHMIDT. I thank the Senator very much for his courtesy. Mr. Chairman and Senator Thurmond, it is a distinct pleasure for me to have the privilege to introduce to the distinguished members of this committee Prof. Susan Webber Wright of Little Rock, AR, who has been nominated to fill a vacancy on the U.S. District Court for the Eastern and Western Districts of Arkansas.

While it is always a pleasure for me to appear before this committee in this capacity, I must admit a special pride this time in that Professor Wright is not only a fellow Arkansan and a personal friend, but she was also one of my congressional interns back in 1972 when she was working on her master's in public administration before she went to law school.

Professor Wright has had a most distinguished academic career. Following graduation from Randolph Macon Women's College, she earned a graduate degree in public administration and a law degree with high honors from the University of Arkansas Law School where she gained the distinction of being the first woman named editor-in-chief of the Arkansas Law Review. As you know, she is currently serving as professor of law at the University of Arkansas at Little Rock School of Law. Ever since I recommended Professor Wright for this position, I have received a steady stream of endorsements from her colleagues and her peers attesting to both her professional and personal exemplary standards.

There is no question but that Professor Wright will be an outstanding member of the Federal bench if appointed. I trust you will agree after hearing from her directly. Let me close by pointing out that Mrs. Wright is accompanied today by her husband, who is the Donaghey Distinguished Professor of Law at the University of Arkansas at Little Rock School of Law. I thank you very much, Mr. Chairman, and Senator Thurmond, for the opportunity to appear before you today.

STATEMENT OF SENATOR BUMPERS

Senator BUMPERS. Mr. Chairman and Senator Thurmond, I am singularly honored and pleased to be here tonight to echo what Congressman Hammerschmidt has already said. We in Arkansas have felt for many, many years that when we can unify ourselves and agree on something, we are infinitely better off, and today is such a case, as Senator Pryor and I are both pleased to be here and to recommend a woman who enjoys a very distinguished career in academia, and whose husband does so likewise, and say that she is replacing a very distinguished woman jurist in our State who has chosen to take senior status. And having said that, let me just also say that Susan and Bob, her husband, are probably as well respected and admired for their talents, their legal talents in our State as any one or two people in the State.

They are both professors of law at the University of Arkansas at Little Rock, and I want to say that I sat at this table a few years ago to strongly recommend a judge for the Western District of Arkansas, and at that time he was dean of the law school at the University of Indiana, and the chairman and the members of the committee had some question about his lack of trial experience. I am happy to report to the committee that after how long, Susan, 4 years?

Ms. WRIGHT. I believe so.

Senator BUMPERS. About 4 years, he has endeared himself to the Bar of Western Arkansas and is considered one of the really outstanding district judges in the United States. And so I have absolutely no qualms about recommending Susan Webber Wright. Her father was a very distinguished attorney, and she comes from a long line of good legal stock. And I am honored to be here to recommend her for your consideration and hopefully your confirmation, Mr. Chairman.

STATEMENT OF SENATOR PRYOR

Senator PRYOR. Mr. Chairman Heflin and Senator Thurmond, it is my great pleasure to join Congressman John Paul Hammerschmidt and my senior colleague, Dale Bumpers, in appearing today at the witness table with Susan Webber Wright. I think there are very few individuals in our country that we would be more proud to nominate today and to strongly recommend to this committee, ultimately to the U.S. Senate, to become U.S. Federal district judge, than Susan Webber Wright. She has unique qualifications as not only a very accomplished attorney, a professor, one who has written extensively in certain areas of the law, but also a vast community-oriented background of public service in those endeavors that she feels would better the quality of man and improve the quality of life for those who are less fortunate.

Two, Mr. Chairman and Senator Thurmond, I would like to echo what Senator Bumpers has said about the person that Susan Webber Wright we hope will replace, and that is Judge Elsie Jane Roy. When I was Governor, I had the high honor of recommending her or naming her to fill a vacancy on our State supreme court. This was the first female member ever. Shortly after that when I came to the Senate I had the high privilege of joining with Senator Bumpers and Congressman Hammerschmidt and the entirety of our delegation, recommending Judge Roy to become U.S. Federal district judge.

So Ms. Wright is going to have some big shoes to fill. If she can do it, she can do it, I think, with grace and ease and certainly with those characteristics that will bring great credit on the American judicial system. It is certainly my pleasure to join with my colleagues today in highly recommending Susan Webber Wright. I thank you very much.

Senator HEFLIN. Thank you. We appreciate your introductions and we will excuse you if you wish to go to other duties.

Senator BUMPERS. Judge, let us get a family photograph here. OK.

Senator HEFLIN. All right. Judge Walker, if you will come around, if you will raise your right hand. Do you solemnly swear that the testimony that you will give at this hearing shall be the truth, the whole truth, and nothing but the truth, so help you God.

Mr. WALKER. I do, Mr. Chairman.

Senator HEFLIN. Would you like to introduce members of your family that might be present, or friends that you have with you?

TESTIMONY OF HON. JOHN M. WALKER, NEW YORK, TO BE UNITED STATES COURT OF APPEALS JUDGE FOR THE SECOND CIRCUIT

Mr. WALKER. I would like to do that, if I could, Mr. Chairman. I have with me my wife Katharine Walker; my father Dr. John Walker, who I was named after; my mother Louise Walker; my cousin Suzanne Robinson and her husband Davis Robinson; my sister Elsie Walker Kilborn is in the back; and my nephew John Walker Kilborn is being held by my sister. He is about 7 weeks old. That is the gang.

Senator HEFLIN. We are delighted to welcome all members of the family that are here today. Judge Walker, you undoubtedly are aware that Professor Alan Dershowitz has accused you of having an ex parte meeting with an attorney who was then appearing before you. Mr. Dershowitz claims that you told this other attorney, a Mr. Michael Armstrong, that you were going to give Mr. Dershowitz, who was a witness in that case, a hard time. Will you please respond to this allegation for the record?

Mr. **Walker**. It never happened. No such meeting took place. No such conversation took place. So that is my knowledge, and I am under oath, and that is what I am testifying to, and that is the truth.

Senator **Heflin**. Judge Walker, in your speech "The Current Constitutional Debate," you quoted Justice White as saying that most of the constitutional law is not to be found by reading the Constitution which is a very short document; to find the constitutional law you must read the cases. This is a judge-made law, a function that judges are performing every single day, and unavoidably so. It is not clear from your speech whether you are quoting Justice White with approval or just reporting on another viewpoint in the debate. Do you think it is inevitable that judges must make some constitutional law?

Mr. **Walker**. Well, in that particular speech to which you are referring, I was quoting the Justice as a statement of his particular viewpoint. My own viewpoint is that essentially when interpreting the Constitution one must begin with the document. Then, one must examine the intent of the framers. But at the same time, then, one must also bring to bear in interpreting that document the viewpoints of a modern perspective. The Constitution in my view was intended by the framers to endure, to gather meaning from experience over the generations, and then, of course, one must examine the case law that interprets that document, and then from that, of course, the doctrines that have emerged can be discerned and applied.

Senator **Heflin**. Judge Walker, in your 1986 speech, "The Current Constitutional Debate," you indicated you agreed with the former Attorney General Meese's general thesis that courts should take a non-expansive reading of the Constitution. Later in that speech you stated that certain rights of criminal defendants, rights of privacy, including the right of an abortion, separation of church and state, represent to Ed Meese and conservatives generally areas in which the Court has gone too far. Without indicating your view on any specific case or issue, could you tell us whether you agree with Mr. Meese that the courts have generally gone too far in those broad areas of the rights of defendants' privacy and separation of church and state?

Mr. **Walker**. Well, I think that the courts have—that particular speech was designed to focus on the debate as it existed at the time. And I quoted obviously the Attorney General's viewpoints at the time. I also balanced that and quoted Justice Brennan, Justice Stevens, and presented their viewpoints as well as Judge Kaufman's. And I was in that particular speech not staking out a viewpoint, a personal viewpoint as much as to try and enlighten a particular audience on the debate as it existed.

My own view is that judges should not legislate. They should interpret the law as it exists. It is their job to interpret the existing law and not to create new law, not to in effect become a supralegislature. And so that is my own particular view, although I did not express it as such when I gave that particular speech.

Senator **Heflin**. Well, even if you believe the Supreme Court has gone too far in some of these important areas, would you agree that your role as a Circuit Court Judge would be to follow the Supreme Court precedents including those with which you do not agree?

Mr. **Walker**. Absolutely. A Circuit Court has no mandate whatsoever to interpret the law other than as set forth by the Supreme Court.

Senator **Heflin**. In your speech on Runyon and Patterson, you argue that the phrase "judicial activism" is not very useful because it explains little, it is too simple, and is too often merely used ill-advisedly. At the same time, you endorse the concept of judicial restraint. Arguably that phrase is also subject to being used in an overly simplistic, sloganeering way. Could you elaborate on your view of the term "judicial restraint"?

Mr. **Walker**. Yes; of course any time one tries to capture a judicial philosophy in a phrase or two, one runs the risk of being labeled as over simplistic or facile. And clearly the law cannot and judicial philosophy cannot be described in such a manner successfully to individuals who are serious thinkers about the law. My own views on judicial restraint are, as I have already stated, that the judges must be careful to interpret existing law and not to create law in the nature of a policymaker, or a legislator.

There are broad political areas that are properly the concern of Congress or the State legislatures. A court should, a judge should identify those areas and not encroach upon the will of the legislature except when there is discerned a command of the Constitution or an overriding principle derived there from. And one should not be in the business of creating, in effect, new law, new rights out of old cloth.

Senator **Heflin**. As you probably know, Professor Dershowitz has raised the issue of nepotism, alleging, of course, that you are related to President Bush.

Mr. **Walker**. And I plead guilty to that.

Senator **Heflin**. And that, therefore, your appointment would be in violation of the anti-nepotism statute. Do you wish to respond to that?

Mr. **Walker**. Well, of course, I considered the statute. My understanding is that legal officers at the Justice Department carefully reviewed the statute and so far every opinion that I have heard with the exception of one is that the statute would not cover an appointment by the President to the judiciary because the judiciary is not an agency over which the President, in which the President serves or over which the President exercises jurisdiction or control, which has been interpreted in the legislative history to mean supervision.

Manifestly, the executive does not supervise the judiciary. It is at the heart of our constitutional system that the two branches, indeed all three branches, your branch as well, enjoys a separation of powers that would render such a construction impossible.

Senator **Heflin**. Senator Thurmond, do you have questions?

Senator **Thurmond**. Thank you, Mr. Chairman. Judge Walker, it is good to see you again and have you here today.

Mr. **Walker**. Thank you, Senator.

Senator THURMOND. I congratulate you upon your selection by the President for this appointment. I believe you were before this committee in July 1985 when you were being considered for your present position. I hope you have enjoyed your tenure on the trial bench and would you tell the committee what difficulty if any you perceive in meeting the challenge of the appellate court?

Mr. WALKER. Well, the courts of appeal enjoy a unique role in our society. The abilities that are required for an appellate judge are different than those of a district court judge, and part of the challenge of becoming an appellate judge is to hone those parts, those qualities that make for a great appellate judge. And one of the principal ones, of course, is the respect for the district court that I think every appellate judge must have.

The district court is a finder of fact. Their findings are secure unless there be clear error, and there should be great difference to the activities of the trial court. I can speak from some experience as a trial judge that trial judges appreciate it when appellate judges are considerate of their role.

Of course, by the same token, an appellate judge has an independent function and must carefully review every activity of the trial court to make sure that fairness is ensured and that the law is properly applied and followed.

Senator THURMOND. Judge Walker, as a district court judge, you have had to make rulings after careful consideration of the facts as presented at the trial. As an appellate judge you will be reviewing decisions of district court judges. What criteria do you intend to use in reviewing those decisions and trial records?

Mr. WALKER. Well, when it comes to reviewing factual determinations by the district court, as a general proposition the standard of clear error is the one that appellate courts in the federal system are called to apply. And that, of course, as I said, recognizes the role of the trial court as a finder of fact. The person who is there on the spot looking at the witnesses, assessing credibility and making the findings of fact in the first instance.

Senator THURMOND. Judge Walker, the phrase "judicial activism" is one often used to describe the tendency of judges to make decisions on issues that are not properly within the scope of their authority. Some judges have taken over school districts, some hospitals, prisons, and State institutions. It seems the power has gone to their head. One judge recently I heard about has even placed a tax on the subdivision of a State. I do not know of any authority for that. We have three branches of government. The legislative branch makes the law. Executive branch executes the law. Judicial branch interprets the law.

That is the Constitution. And it is very frustrating when we see judges who abuse that power by usurping the power of other branches of government and of the States. How do you feel about that?

Mr. WALKER. Well, Senator, as I may have indicated or as I believe I have indicated earlier, I feel very strongly that it is the role of the judges to interpret the law and not to create or legislate.

Senator THURMOND. I hope you enjoy your tenure on the bench, and I again congratulate you upon your appointment.

Mr. WALKER. Thank you, Senator.

Senator THURMOND. And I will be glad to support you.

Mr. WALKER. Thank you, Senator.

Senator HEFLIN. Senator Simpson, do you have questions.

Senator SIMPSON. Mr. Chairman, I thank you for holding this hearing and for adding Judge Walker's name to the list, I appreciate that. I just want to say that in looking at his résumé and the things he has done, I think we should be proud to place him in this new position on the U.S. Court of Appeals for the Second Circuit. On this record, which is very much public, the American Bar is also impressed with his credentials. We have had some struggles with the American Bar on their rating systems, but they had rated you well qualified, which as we know, Mr. Chairman, is the ABA's highest rating. Apparently, there is only one real thorough objection to you. I have heard that criticism that came from a single person, but I have not heard that echoed by any other member of the committee. And I would not think that your nomination would be controversial.

I just want to lend my strong support, and I understand that criticism that has been aired is from a previous litigant who was before you; is that correct?

Mr. WALKER. Yes; there was a matter—the criticism that has come forward has been from a person who had an interest in a matter before me, and the ruling that I gave was not in that person's favor.

Senator SIMPSON. Would you think that that might be a reason for that person's criticism of you in these proceedings?

Mr. WALKER. Well, I think that perhaps the best thing to do would be to ask that person if that is the reason. I do not want to speculate about that.

Senator SIMPSON. Well, that would be an excellent idea. It certainly would. Because I read that as somewhat of a grudge, where you lost the case and thought you would ring one up on the judge that did it, and I hope that that petty matter will not cloud the judgment of my colleagues of either party in your nomination process. And I just wanted to come by to help assure that. And if the professor comes in, perhaps I can ask him some questions like that.

Mr. WALKER. Thank you very much, Senator. I appreciate your support.

Senator SIMPSON. Indeed.

Senator HEFLIN. Senator Specter will be here later. He wants to ask you some questions so we will excuse you this time.

Mr. WALKER. Very well.

Senator HEFLIN. But if you will stick around until he gets to do it.

Mr. WALKER. Certainly.

[Pertinent information follows:]

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
UNITED STATES COURTHOUSE
FOLEY SQUARE
NEW YORK NY 10007-1581

CHAMBERS OF
JOHN M. WALKER JR
DISTRICT JUDGE

November 13, 1989

The Honorable Howell Heflin
United States Senate
Washington, D.C. 20150

Dear Senator Heflin:

I am writing to thank the Judiciary Committee for scheduling my hearing on November 7 and, in particular you, Senator, for chairing and for extending courtesies to me and my family at the hearing.

I also want to take this opportunity to bring to the Committee's attention some matters to supplement my responses to the Committee's questionnaire.

The first came to my attention as a result of a communication last week by the clerk of the Court of Appeals to my law clerk in connection with the filing of a complaint by a pro se litigant against a full Second Circuit panel on which I sat by designation, which was dismissed as meritless. (See Attachment.)

The second came to my attention as a result of a mailing that I received last Friday as a Yale alumnus from the Phelps Association, a fraternity alumni body in which I was active for a time as a governor in the 1970's but have not been active since. According to the mailing, the fraternity which, of course, was all male when I attended Yale in the years before coeducation, and has since remained all male, is presenting the issue of coeducation for consideration by the alumni next year. While I am aware of the arguments of both sides, I am supportive of equal opportunity and expect to vote for the change.

In connection with the forgoing, I reviewed the Committee's questionnaire and discovered that I had also inadvertently omitted to mention the Merchants Club (a lunch club near the courthouse to which many judges belong) and Michigan Law School's Committee of Visitors (the Dean's informal alumni advisory body), both of which are non-restrictive.

I bring these matters to the Committee's attention to supplement the record and regret any inconvenience their inadvertent omission may have caused.

Again, it was a pleasure to testify at the hearing and to have an opportunity to meet you in person.

Sincerely Yours,

JMWalker Jr.
John M. Walker, Jr.

Enclosure
cc: The Honorable Joseph R. Biden, Chairman
The Honorable Strom Thurmond, Ranking Minority Member

Attachment

In October, 1987 Robert Neville commenced a pro se action in the United States District Court for the Eastern District of New York against certain justices of the Appellate Division of the Supreme Court of the State of New York, Second Judicial Department, seeking, among other things, an order declaring section 90(10) of the Judiciary Law of the State of New York unconstitutional.[1] The district court dismissed Neville's complaint on the grounds that the issues presented had already been determined by the state court in which Neville had previously brought suit. In March, 1988, Neville appealed the district court's decision to a three judge panel of the United States Court of Appeals for the Second Circuit on which I was sitting by designation. Neville asked that the entire panel recuse itself. The court refused to do so. The panel affirmed the district court by summary order.

Subsequently, on December 8, 1988, Neville filed separate judicial misconduct complaints against the entire Second Circuit three judge panel. On January 10, 1989, Chief Judge Oakes dismissed Neville's complaint as without merit. Neville's petition for review by the Judicial Council of the Second Circuit was denied on January 31, 1989.

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[1] Section 90(10) of the Judiciary Law gives the Appellate Divisions disctretion to entertain and grant requests for disclosure of otherwise confidential information relating to the conduct or discipline of an attorney.

People For The American Way
ACTION FUND

November 9, 1989

The Honorable Joseph Biden
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Senator Biden:

Attached is a report by People For the American Way on the nomination of John M. Walker, Jr. to the Second Circuit Court of Appeal. We ask that it be included in the hearing record.

Thank you,

Melanne Verveer

REPORT OF
PEOPLE FOR THE AMERICAN WAY ACTION FUND
ON THE NOMINATION OF
JOHN M. WALKER, JR. TO THE
SECOND CIRCUIT COURT OF APPEAL

I. Nominee's Background

Judge Walker graduated from Phillips Exeter Academy, earned his B.A. from Yale University in 1962, and his law degree from the University of Michigan Law School in 1966. After his graduation from Michigan, he was State Counsel to the Attorney General of the Republic of Botswana from 1966 to 1968. From 1969 to 1970, Walker was an associate with the law firm of Davis, Polk & Wardell in New York City. He served as an Assistant U.S. Attorney for the Southern District of New York in the narcotics and securities fraud units from 1970 to 1975. In 1975, Walker joined the Wall Street law firm of Carter, Ledyard & Milburn, practicing primarily in banking and securities civil litigation. While with Carter, Ledyard & Milburn, Walker was active in the campaign of his first cousin, George Bush for President. After Bush was nominated as Vice President, Walker was an active supporter of Ronald Reagan for President.

In 1981, Walker was named Assistant Secretary of the Treasury and worked in the Enforcement and Operations division until 1985. Under Walker's direction, the Treasury Department investigated the First National Bank of Boston and other large banks for violations of the Bank Secrecy Act of 1970, which requires banks to report large cash transactions.

As Assistant Secretary, Walker was head of the Office of Foreign Assets Control, and was thus responsible for enforcing President Reagan's order under the Emergency Economic Powers Act that banned trade to Nicaragua. Walker also had responsibility for the U.S. Customs Service, the Secret Service and the Bureau of Alcohol, Tobacco and Firearms while serving as Assistant Secretary. Walker also campaigned on behalf of congressional candidates, according to his Biographical Questionnaire.

President Reagan appointed Walker to his current post as a U.S. District Judge in the Southern District of New York in 1985. Until Walker was named to the district court in 1985, he was a member of the Metropolitan Club in Washington, D.C. and the Links Club in New York City. Neither of these clubs admitted women as members when Walker resigned in 1985.

Judge Walker is a member of various local and national bar associations and the Federal Judges Association. Judge Walker has published a law review article on grand jury secrecy, contributed to a manual for prosecutors on proving federal crimes, and lectured on matters related to constitutional interpretation, including *stare decisis* and the original intent of the Framers. In his 1983 law review article on grand jury secrecy, Judge Walker criticized the Supreme Court's holding in *United States v. Sells*, which tightened the standard by which the government could gain access to grand jury records. He believed that while the desired disclosure would not threaten grand jury secrecy, the burden imposed upon the government would impede law enforcement. *United States v. Sells: Engineering a Result to Promote Grand Jury Secrecy*, 21 American Crim. L. Rev. 99 (1983).

Judge Walker notes in his Biographical Questionnaire that he performed *pro bono* representation of indigent tenants while in private practice. He also notes that he was a member of the panel of attorneys which receives assignments pursuant to the Criminal Justice Act to defend indigent criminal defendants, but does not indicate whether he ever actually represented any such defendants.

Since joining the Federal bench, Judge Walker has presided over a number of highly publicized trials, including the tax fraud prosecution of hotel magnate Leona Helmsley. Judge Walker has been credited with presiding evenhandedly and with good humor over the Helmsley trial. Judge Walker has also presided over a number of other high profile cases, including a civil trial involving Claus von Bulow, Wall Street insider-trading prosecutions, and a Planned Parenthood challenge to the Reagan Administration's policy of limiting federal funds to international organizations that counsel on abortion.

II. Nominee's Record

The People For the American Way Action Fund examined Judge Walker's decisions in the area of civil rights and civil liberties. Of 192 published opinions during his tenure as a district court judge in New York, some 45 cases involved constitutional, civil rights or criminal law issues.

Based on our review of selected opinions of Judge Walker, and of the Second Circuit when it reviewed Walker's rulings, he appears to be a fair trial judge. His opinions are generally well-reasoned and restrained. Walker has a reputation for being "sensitive to new legal arguments" and listening closely to the lawyers before him. He is known as an evenhanded, moderate judge, with a good understanding of complex legal issues. He has a reputation for pushing parties to keep on schedule and is considered courteous to lawyers and litigants. However, he has also been criticized for not always being "decisive" and "still feeling his way." (*Almanac of the Federal Judiciary*, Volume 1, p. 26.) Walker is also known as a tough sentencer and for his no nonsense approach to trial management. ("Presiding at Helmsley Case Hurls Walker Into Spotlight," *New York Law Journal*, July 5, 1989, pp. 1-2.)

Harvard Law Professor Alan M. Dershowitz has strongly opposed Judge Walker's nomination and has termed him an "obscure man" and a "legal mediocrity" who had a "lackluster career." Dershowitz charges that Judge Walker was nominated only because he is the cousin of President Bush. ("Bush League on the Bench," *New York Forum*, Sept. 29, 1989, pp. 72-74.)

Stanley S. Arkin, senior member of Stanley S. Arkin, P.C. and a fellow of the American College of Trial Lawyers, has rebutted Dershowitz's charges. Arkin termed Dershowitz's remarks "cheap, petty comments ... running afoul of Ethical Consideration 8-6 of the Code of Professional Responsibility," which mandates that members of the Bar avoid petty criticisms of judges and confirm that their complaints are merited, so as to avoid diminishing public confidence in the legal system. Arkin questions Dershowitz's motivations and also notes that Judge Walker is one of the most frequently affirmed judges in the Southern District and has a good reputation among trial lawyers. ("The Professor and the Judge," *New York Law Journal*, Oct. 23, 1989.)

III. *Specific Cases*

A. The *Planned Parenthood* Case

In 1987, Planned Parenthood challenged the Reagan Administration's policy of requiring that private foreign health organizations receiving federal assistance certify in writing that they do not perform or actively promote abortions as a method of family planning. *Planned Parenthood Federation of America, Inc. v. Agency For International Development*, 670 F.Supp. 538 (S.D.N.Y. 1987), *aff'd in part, rev'd in part*, 838 F.2d 649 (2d Cir. 1988). Planned Parenthood argued that this policy imposed an impermissible restriction on the First Amendment rights of these organizations to speak and advocate as to the availability and benefits of abortion. 670 F.Supp. at 541. Judge Walker concluded that Planned Parenthood's constitutional challenge to the Reagan Administration policy was a foreign policy question and therefore was beyond his judicial reach. *Id.* at 550. Walker stated that the claims were non-justiciable because they were "targeted not merely at a method or means of implementation of foreign policy, but at the foreign policy itself." *Id.* at 547. He accordingly dismissed the claims. *Id.* at 550. This ruling raises some question about the extent of Judge Walker's deference to executive authority.

The Second Circuit reversed this aspect of Walker's decision and remanded the case for a determination of the constitutional claims. 838 F.2d at 656. It found that the "appellant's constitutional claims challenge the legality of AID's implementation of the [statement] ... and do not require the court to pass on the political and social wisdom of AID's foreign policy." *Id.* Quoting a 1986 Supreme Court decision, *Japan Whaling Ass'n v. American Cetacean Society*, 478 U.S. 221, 106 S.Ct. 2860, 92 L.Ed.2d 166 (1986), the Second Circuit explained that the judiciary "cannot shirk [its constitutional] responsibilit[ies] merely because [a] decision may have significant political overtones." 838 F.2d at 656. This case is now back before Judge Walker, who ordered continuation of funding while the case is being resolved.

B. The *Claus von Bulow* Case

In 1982, Claus von Bulow was found guilty of attempting to murder his wife, Martha "Sunny" von Bulow, by injecting her with various drugs. After his conviction, von Bulow retained Harvard law professor Alan M. Dershowitz to represent him on appeal. Dershowitz was successful in having the conviction overturned by the Rhode Island Supreme Court in 1984. *State v. von Bulow*, 475 A.2d 995 (R.I.), *cert. denied*, 469 U.S. 875, 105 S.Ct. 233, 83 L.Ed.2d 162 (1984). Upon retrial in 1985, Dershowitz represented von Bulow and won an acquittal.

After Claus von Bulow's acquittal, Sunny von Bulow's children, from a previous marriage, filed a civil action against their stepfather charging him with common-law assault, negligence, fraud and RICO violations. Judge Walker presided over this civil trial. *See Von Bulow By Auersperg v. von Bulow*, 114 F.R.D. 71 (S.D.N.Y. 1987) *rev'd*, 828 F.2d 94 (2d Cir. 1988). In May of 1986, Alan Dershowitz released his version of the von Bulow affair, *Reversal of Fortune--Inside the von Bulow Case*. After the book was published, Dershowitz and von Bulow promoted it on several radio and television shows.

After obtaining advance copies of the book, the attorneys representing the von Bulow children informed Claus von Bulow that they would view publication as a waiver of the attorney-client privilege. After the book was released, the attorneys for the children moved to compel discovery of certain discussions between von Bulow and Dershowitz based on this alleged waiver of the attorney-client privilege. Judge Walker concluded that the attorney-client privilege had been waived and he ordered von Bulow and his civil attorneys to comply with the discovery requests of the children's attorneys. *Von Bulow by Auersperg v. von Bulow*, 114 F.R.D. 71 (S.D.N.Y. 1987).

Judge Walker said that the book, which he had read, was in no way confined to "publicly-filed briefs, transcripts, exhibits and other documents." 114 F.R.D. at 73. Walker stated that the book takes the reader "inside the von Bulow case" and contains "extensive accounts not contained in any public transcript, brief or court record, of Dershowitz's private discussions with his client, von Bulow; with fellow counsel; and with potential witnesses." Id. Accordingly, Walker concluded that von Bulow had waived his attorney-client privilege. Id. Walker ruled that the children's attorneys were entitled to discover "the entire contents of all conversations from which Dershowitz published extracts in Reversal of Fortune." 114 F.R.D. at 79

The Second Circuit Court of Appeals vacated Judge Walker's discovery order. Von Bulow by Auersperg v. von Bulow, 828 F.2d 94 (2d Cir. 1988). The Second Circuit agreed that there had been a waiver of the attorney-client privilege but ruled that the waiver of privilege was not nearly as broad as Judge Walker had found. Id. at 101. Walker's ruling would have allowed discovery of not only the conversations disclosed in the book but also all related conversations. The appeals court stated that it was an abuse of discretion for Walker to force Dershowitz and von Bulow to disclose portions of certain conversations that, because they were not published, remained secret. Id. at 102.

C. Access to Government Information

While presiding over a Freedom of Information Act (FOIA) case filed in 1987 by the Lawyers Committee for Human Rights Judge Walker demonstrated that he is not hesitant to overrule federal agency's decisions to withhold information from the public. Lawyer's Committee for Human Rights and Arthur C. Helton v. Immigration and Naturalization Service, Lexis 10939. In October 1986, Patricia Lara Salive, a Columbian journalist, arrived at New York's Kennedy Airport. Lexis at 3. Lara was to attend a journalism awards ceremony at Columbia University, but Immigration officials at Kennedy airport found Lara's name on the INS National Automated Immigration Lookout System (NAILS) and detained her. Id. The NAILS list identifies certain persons as "excludable" for numerous reasons. Lara was detained for six days and then returned to Columbia, apparently because of alleged involvement with M-19, a Columbian terrorist organization. Id. Lara denied any such involvement. Id. The Lawyers Committee brought suit against the FBI, the CIA, the State Department, and the INS in an attempt to obtain information about why the government excluded Lara from entering the United States and to obtain more information about the government's exclusion program in general.

While Judge Walker held for the government on some issues, he was generally critical of the State Department, FBI, CIA and INS for hiding behind vague language and boilerplate excuses for withholding information under FOIA. Walker stated specifically that it was insufficient under the FOIA for the agencies merely to recite the hazards of disclosure, restate the general purposes behind exemptions to the FOIA, and assert that the documents were covered by the exemptions. *Id*. at 8.

Walker accepted the FBI's affidavits explaining why records had been withheld under specified FOIA exemptions concerning national security and law enforcement records. *Id*. at 14. However, he rejected the FBI's claim under the exemption concerning confidential sources as insufficient. Walker ordered the FBI to submit this information to him for *in camera* review, along with records which the FBI withheld under the investigatory methods and techniques exemption. *Id*. at 16-17.

With respect to the CIA, Walker wrote that "while it appears that the FBI has attempted to create a full public record, the CIA's efforts have fallen short." *Id*. at 19. He explained that, in attempting to justify secrecy the CIA repeatedly used meaningless phrases to describe why material was withheld. *Id*. at 18. For example, the CIA hid behind blanket references to "specific events and political activities," instead of detailing the activities or events discussed in the documents. *Id*. at 18. Walker instructed the CIA to submit another affidavit, providing a more detailed explanation of its withholdings. *Id*. at 19. If the CIA could not do so, he stated that he would, if necessary, order *in camera* review of the CIA's classified affidavit or of the documents themselves. *Id*.

Walker also refused to accept the State Department's attempt to delete the names of State Department employees from their records. He stated that the Department had not adequately demonstrated how any security or privacy interests outweighed the public's right to obtain this information under the FOIA. *Id*. at 20.

Walker also ordered the INS to release information about the people who were on the NAILS list. Walker recognized the strong privacy interests involved and ruled that the INS could withhold names of those on the list. *Id*. at 23. However, he ordered the INS to disclose the occupation, country and basis for exclusion of the people on the list that is used by border officials to screen "undesirable aliens." Walker stated that the plaintiff's goal of using the FOIA to gain information about the government's policy of excluding aliens on ideological grounds would be thwarted if the Service was able to suppress this information. *Id*. at 23.

D. *Drug Trafficking-Life Imprisonment*

In *United States v. Torres*, 699 F.Supp. 419 (S.D.N.Y. 1988), Judge Walker sentenced two brothers to life imprisonment on heroin charges and ordered that $10 million of the drug profits confiscated from them be used for drug treatment programs in the

South Bronx. In his Biographical Questionnaire, Judge Walker listed his opinion in *Torres* as one involving significant constitutional issues. In *Torres*, six defendants, who were all convicted of various offenses involving a heroin trafficking ring, filed a number of post-trial motions for relief. Three defendants claimed that the mandatory sentence of life imprisonment without parole violated the Eighth Amendment's ban against cruel and unusual punishment as well as the due process clause of the Fifth Amendment. *Id*. at 421-22. Defendants also moved for acquittal based on insufficiency of the evidence and, in the alternative, moved for a new trial. *Id*. at 422. Judge Walker denied all the motions. *Id*.

Review of the *Torres* case demonstrates that Judge Walker takes a hard-line approach toward drug-related offenses. In considering the appropriateness of life imprisonment, Judge Walker considered the harm which large scale drug operations inflict upon society. Walker wrote that "the enormity of the continuing criminal enterprise offense for which the defendants were convicted is as apparent as its harm to society. The vast quantities of heroin they injected into the stream of commerce did not enter a vacuum. Rather those drugs were consumed by hundreds of individuals whose debilitating addictions assured defendants a ready market and obscene profits." *Id*. at 425. Considering the scale of the defendants' operation and their effect on society, Walker was "unable to conclude that the penalty of life imprisonment without the possibility of parole is 'grossly disproportionate,' much less disproportionate at all, to the crimes these defendants committed." *Id*. at 425. As for the sufficiency of the evidence motion, Walker noted that he had rarely seen so much convincing evidence introduced at trial. *Id*. at 428.

E. *SAT Scores and Scholarship Awards*

Judge Walker also listed a challenge to the awarding of New York State Regent Scholarships based solely on Scholastic Aptitude Test (SAT) scores as one of his significant opinions. *Sharif by Salahuddin v. New York State Education Department*, 709 F.Supp. 345, *later proceeding*, 709 F.Supp. 365 (S.D.N.Y. 1989). In that case, the plaintiffs charged that the state misused the SAT by relying solely upon these tests in awarding millions of state dollars in scholarships. The plaintiffs claimed that the practice of sole reliance on SAT scores to award state scholarships disparately impacts female students because it underpredicts academic performance for females. 709 F.Supp at 360. The Regents scholarships are intended to award *achievement*, plaintiffs explained, while SAT scores are supposedly predictors of *aptitude* and are not designed to measure academic performance and achievement. *Id*. at 348.

Judge Walker stated that "after a careful review of the evidence, this court concludes that SAT scores capture a student's academic achievements no more than a student's yearbook photograph captures the full range of her experiences in high school." 709 F.Supp. at 362. Walker concluded that sole reliance on SAT scores violated both Title IX and the Constitution's equal protection clause. 709 F.Supp. 364. He ordered the New York State Department of Education to discontinue sole reliance on SAT scores and to award scholarships in a way that more accurately measures students' achievement. Id.

F. Other Reversals

Other than the Planned Parenthood and Von Bulow cases discussed above, Judge Walker has been reversed, in whole or in part, on four other occasions, as noted in his Biographical Questionnaire. Although, these cases are outside the civil rights and civil liberties subject areas upon which the People For the American Way Action Fund has focused, one of these cases merits attention because it relates to Judge Walker's overall grasp of general legal principles.

In Vitol Trading S.A., Inc. v. SGS Control Services, Inc., 874 F.2d 76 (2d Cir. 1989), the Second Circuit reversed Judge Walker's ruling in a breach of contract action. This case involved a suit against SGS Control Services, Inc. (SGS), a company that conducts chemical tests on petroleum products. Vitol, a petroleum shipper, hired SGS to conduct tests to determine if its petroleum met certain contract specifications required by a buyer. Vitol conducted a series of tests and concluded that a Vitol shipment was substandard. Vitol suffered serious losses and claimed that SGS was at fault because it failed to conduct the tests properly. Judge Walker ruled against SGS and awarded Vitol $547,688. Vitol Trading S.A., Inc. v. SGS Control Services, Inc., 680 F.Supp. 559, 570 (S.D.N.Y. 1987), rev'd, 874 F.2d 76 (2d Cir. 1989).

The Second Circuit ruled that Walker committed an error at law by applying an incorrect rule of damages in deciding the case. 874 F.2d at 77. Although Walker correctly determined that SGS breached its duty to conduct proper tests, the court explained, he incorrectly concluded that this breach was the cause of Vitol's losses. Id. at 80. Indeed, the court noted that Walker specifically found that even if the tests had been performed properly, the products would probably still have been found to have violated the contract specifications. Id. at 79. The court rebuked Walker by stating, that under these circumstances, to "hold SGS liable for reporting that the [products were] below specification is akin to killing the messenger bringing bad news." Id. In addition, one appellate court judge stated that even if Vitol had proved causation, to recover the company must still have demonstrated that SGS had notice of the special circumstances that would render it liable and that SGS had assumed such a risk. Id. at 81. There was no evidence presented that SGS had notice of the special circumstances that would have subjected it to a half-million dollars in damages. Id. at 82. The appellate court drastically reduced the damage award from the $547,688 that Walker had assessed to just $220, the fee paid to SGS to perform the tests. Id. at 82.

Senator HEFLIN. All right. Thank you. Now we will hear from Professor Alan Dershowitz of the Harvard Law School. Professor.

TESTIMONY OF ALAN M. DERSHOWITZ, PROFESSOR, HARVARD SCHOOL OF LAW

Mr. DERSHOWITZ. Thank you, Senators. I am here to perform an unpleasant duty, to oppose a nomination of a judicial officer, and I would like to first clarify the matter of Senator Simpson's question. I was never a party in any litigation before Judge Walker. I have never lost a case in front of Judge Walker. I was a witness in a case before Judge Walker. I have previously represented a defendant named Klaus von Bulow. We won every single aspect of that case. The only issue on which Judge Walker ruled adversely to my prior client was completely——

Senator HEFLIN. Could I interrupt you? I forgot to swear you.

Mr. DERSHOWITZ. Oh, I am sorry.

Senator HEFLIN. If you will stand, please. Do you solemnly swear that the testimony you will give in this hearing will be the truth, the whole truth and nothing but the truth, so help you God?

Mr. DERSHOWITZ. Yes, I do.

Senator HEFLIN. Do you affirm that what you have testified to previously was the truth, the whole truth, and nothing but the truth, so help you God?

Mr. DERSHOWITZ. Yes.

Senator HEFLIN. All right. Go ahead, sir.

Mr. DERSHOWITZ. And I am here to say that I hold absolutely no grudge. The ruling that was against my client was reversed very favorably to us on appeal, and I hope that my testimony will be taken on the merits of what I have to say. I am opposing this nomination primarily because it is in violation of the anti-nepotism statute both in spirit and in language. Judge Walker is correct when he points to the language of the statute that prohibits the President—by the way it specifies the President—it specifically applies to legislative appointments, and it specifically applies to first cousins.

It does preclude the appointment of anybody to any agency over which the President exercises control. The word "supervision" does not appear in the statute nor does it appear in the legislative history as a narrowing or modification. At one point it is used as a shorthand for control and at another point it is stated very broadly as having authority to make appointments of civilian officers or employees in the federal service.

The Congressman who introduced the statute made it clear that he intended it as a broadbased and very general prohibition against nepotism. He had been working for years on an across the board anti-nepotism statute because it was a strongly held belief that nepotistic appointments, appointments of first cousins or other close relatives, destroy the morale of the Federal service. And although occasionally it may result in the disqualification of highly qualified people for office, on balance Federal interests are best served when first cousins and other close relatives of the appointing official are not close relatives, are not appointed to these positions.

I believe that Congress used the word "control," and it used another word as well as "control," which I will find in just one moment, jurisdiction or control, as a modification of another part of the statute, which talks about advocating for appointment. So the statute really has two prohibitions. I read it as prohibiting anybody who has the appointing power from appointing any close relative and anybody who does not have the appointing power himself or herself, but is in an agency where somebody else has the appointing power prohibits him from advocating or suggesting the appointment of anybody within that agency over which he has control.

That is the most sensible reading of the statute. If I am wrong about that, it seems to me this committee is the place to make that decision because there have been some courts which have said that it does not create a private right of action. This is a direction to the appointing authorities which in a judicial appointment is both the President and the Senate of the United States. And I believe that the spirit of the statute clearly intended to prohibit appointments of first cousins to judicial positions as well as to any other position.

Now I am not here to say and I will not say that Judge Walker is not qualified to serve in the judiciary. That is not my position. My position is there are a great many people far more qualified for this appointment than Judge Walker. If the President had asked any group of distinguished lawyers for a list of the 10, 20, 50, 100, most qualified people for this position, Judge Walker's name would not appear on the short list or the long list. Even his staunchest supporters have acknowledged that the reason he got this nomination was because of family connections.

And when a nomination is made as the result of family connections, when that is the but-for, the sine qua non of the appointment, it seems to me that at the very least this Committee has an obligation to inquire scrupulously and to ask the most probing questions as whether this is the most qualified nominee, or whether the President has appointed a nominee because of nepotistic reasons. And finally, one brief word about the ex parte conversation. I too am under oath, and I hereby reiterate and answer. That Mr. Michael Armstrong, the attorney for the children in the von Bulow case who were a party in a case pending before Judge Walker, confirmed to me that he had a conversation with Judge Walker at a judicial conference meeting in September of 1986 in which my testimony was the subject of that discussion.

I had written a book previously many years ago called The Best Defense in which I had been critical of some members of the United States Attorney's Office for the Southern District including Mr. Armstrong who told me one of Judge Walker's friends who was in the U.S. Attorney's Office at that time. And the thrust of the conversation was, and Mr. Armstrong told me the conversation was in humor and not to take it seriously, but he confirmed to me personally the essence of the conversation that he and Judge Walker had talked about how I was going to have to stew in my own ethical juices, how I was going to have to twist in the wind just a little bit, nothing serious, because it was about time somebody held me to the ethical standards that I had held the U.S. Attorney's Office.

I had no interest in the case. I was out of the case a long time. I was no longer representing Mr. von Bulow, and in fact nothing came of the case which in any way negatively impacted on my life, my career, or my professional reputation. But I remember that conversation. When it was reported to me I spoke to Mr. von Bulow and to his then attorneys, and I mentioned to them this conversation and we had a discussion as to whether this conversation formed a basis for a disqualification motion, and a conclusion was reached that since I was a witness and not a party no disqualification motion would be appropriate.

The conversation occurred, Senators, and I am swearing under oath that this conversation occurred. We have a conflict in testimony. We have two people taking diametrically opposite views as to whether an improper ex parte conversation occurred. I am sorry to have to be in a conflict with a person who has been nominated to the second circuit. There is nothing personal about this conflict. I do not know Judge Walker. I have never met him. This is the first time I have actually seen him in person and everybody I know tells me he is a very, very nice and decent man. And I have no reason to disbelieve that. But in this instance, we have diametrically opposite testimony on a particular incident.

If my testimony is correct, I think it would be a disqualifying factor for a judicial appointment. If my reading of the statute is correct, it is a disqualifying factor, and if the statute does not specifically apply, then I strongly believe that the spirit of the statute, a broad-based anti-nepotism prohibition should be served in the interest of this country by this committee. There are many, many excellent qualified people to sit on the second circuit, but once we allow a President to appoint a relative, we breach that wall of nepotism which Congress for years has worked hard and has successfully wiped out of the Federal service. And I would hate to see it return through the vehicle of this appointment. Thank you for your attention, Senators.

Senator HEFLIN. Well, as I interpret your testimony, you divide the statute into two divisions. You in effect are saying that No. 1, nepotism as it would apply to appointment of a relative, and the second phase is that any person who is in a position in any agency should not recommend, advise over anyone that he would exercise jurisdiction or control; is that right?

Mr. DERSHOWITZ. That is right. That is right.

Senator HEFLIN. And under your interpretation the Attorney General could not recommend the Assistant Attorney General in charge of criminal affairs or the Secretary of Agriculture could not recommend the Assistant Secretary in charge of forestry? I mean would that be your interpretation?

Mr. DERSHOWITZ. No, no. He could not recommend a relative to that position nor could he recommend, nor could he advocate. For example, the Assistant Attorney General could not advocate that the Attorney General ask the President to appoint his relative to any cabinet position over which that primary relative has any jurisdiction or control. In other words, the advocacy modifies the jurisdiction and control part of the statute. The very appointment constitutes control, and——

Senator HEFLIN. Well, now you consider under the two parts that there has to be a relative?

Mr. DERSHOWITZ. Oh, yes. Oh, the statute is anti-nepotism statute. There must be a relative. And my reading of the statute, and I think the fair reading of the statute, is the very act of appointment, of course, constitutes control, but then the act of advocacy, which is a much more distant act than appointment, that requires that there be some additional factors like jurisdiction or exercise some degree of supervision, if you take the words from the legislative history.

But we all know, for example, that Presidents claim to be able to control the nature of judicial appointments. They claim that as a very important part of their prerogative to be able to name people to the courts. Franklin Delano Roosevelt tried to control the Supreme Court of the United States through his appointments, and if a President were able to load a court with all of his relatives, talk about problems of separation of powers, this would be indeed a very substantial problem of separation of powers. So I think that Judge Walker's own definition of how a judge should read a statute, this statute in my view, prohibits this nomination from going forward.

Senator HEFLIN. Senator Thurmond.

Senator THURMOND. You are a graduate of Harvard?

Mr. DERSHOWITZ. Yale.

Senator THURMOND. Mr. Walker is a graduate of Yale?

Mr. DERSHOWITZ. We are both, I think Judge Walker is a graduate of Yale College, and I am a graduate of Yale Law School.

Senator THURMOND. There is a lot of rivalry between those two schools. I just wondered if that had anything to do with this?

Mr. DERSHOWITZ. Well, I love both schools, having gone to one and get paid by the other.

Senator THURMOND. OK. The ABA has found him well qualified. What do you say to that?

Mr. DERSHOWITZ. I think the ABA, with all due respect, is wrong. I think that Judge Walker deserves an intermediate ranking. He has been on the court for 4 years. He is not regarded by his peers, by those who practice in front of him, as one of the most distinguished or exceptional judges. He is regarded as an average judge. That is the reputation that people——

Senator THURMOND. How would you rank him then? Disqualify him?

Mr. DERSHOWITZ. No, no, no. I made it clear. I do not believe that his personal record and reputation, if he were not the President's cousin, would by its very self disqualify him, nor would it qualify him. That is he would not have gotten the nomination but for the fact that he is the President's cousin.

Senator THURMOND. I am not speaking now about the relation. I am speaking about his qualifications.

Mr. DERSHOWITZ. If his name——

Senator THURMOND. If you had to rank him, how would you rank him?

Mr. DERSHOWITZ. I would rank him as an average judge in the Southern District of New York with less——

Senator THURMOND. Well, you rank him—qualified, and the American Bar ranked him well qualified.

Mr. DERSHOWITZ. Qualified.

Senator THURMOND. How would you rank him?

Mr. DERSHOWITZ. Qualified.

Senator THURMOND. Oh you would rank him qualified?

Mr. DERSHOWITZ. I would rank him qualified.

Senator THURMOND. Well, therefore he would be entitled to serve if he was appointed then?

Mr. DERSHOWITZ. You would be entitled to say that if you nominated him, you would be nominating a man who is qualified to be on the judiciary but who would not have been nominated for that position but for his close relation to the President. I would have no objection if the Senators were to state that for the record that he is qualified but would not have been nominated but for the fact that he is the President—I do not think the American public would find that a very acceptable situation, and I think that is the truth that he is qualified, but among the many, many qualified people for this job, he is not nearly among the most qualified.

Senator THURMOND. Well, that is not the law though. A lot of people are qualified, and then the President makes a choice. Whether he is the best or not, he does not have to be the best.

Mr. DERSHOWITZ. That is exactly right because Presidents are presumed to make their choices on the basis of objective other factors, but when the President's choice is determined by relationships, the President has not made that choice that he normally makes. He has picked his cousin, and when he picks his cousin, and that cousin is not among the most qualified, that raises grave questions of public perception and morale.

Senator THURMOND. Well, now President John Kennedy appointed his brother Robert, Attorney General. Did he violate the law?

Mr. DERSHOWITZ. The law was not in effect at that time, and had he nominated his brother as Attorney General after the law went into effect, there can be absolutely no doubt that that would have been an illegal nomination. Indeed, I think the nomination of Robert Kennedy, although I believe he served in an extremely distinguished manner, was part of the reason behind the impetus of the statute. It clearly would not be permitted today under the law, and no President has done that.

Senator THURMOND. You mean anybody now that is related to President Bush cannot serve in the Government then?

Mr. DERSHOWITZ. That is essentially right. Anybody who is a first cousin or closer to the President of the United States—when your cousin becomes President, you lose certain privileges, and under this legislation one of these privileges——

Senator THURMOND. No matter how well qualified they are, anybody kin to President Bush, they are out?

Mr. DERSHOWITZ. That is right. That is my reading of the statute. Now if my reading is wrong, it seems to me the alternative interpretation ought to be in terms of policy. That if the President does appoint a relative, he ought to be the most qualified person for the job. It should not be enough that he is one of many minimally qualified people for that job because that is when morale is grossly affected. When other judges say, look, we have served longer, we have served with greater distinction, we have written better opinions, we are better regarded by the bar, and we were not considered, and the only reason he was considered and we were not is we are not lucky enough to have a cousin in high office and he has. That is the question of morale that is raised by this nomination.

Senator THURMOND. Now you do not think this statute——

Senator HEFLIN. Senator, could we interrupt just a minute. I see Senator Dole has come, and I know he is extremely busy and needed at other places. But could we interrupt right here?

Senator THURMOND. Why certainly.

Senator HEFLIN. Senator Dole, if you would come forward.

Senator THURMOND. The Republican leader is entitled to be heard at all times immediately.

STATEMENT OF HON. ROBERT DOLE, A U.S. SENATOR FROM THE STATE OF KANSAS

Senator DOLE. I want to thank the chairman, the distinguished chairman, and my colleague, both colleagues, former chairman of this committee, Senator Thurmond. But I would just like to include my statement in the record. I have known Tom Van Bebber back to law school days, and I think Senator Kassebaum has made a formal introduction. I think he is highly qualified. He is an outstanding individual in his own right. He has done an outstanding job in our State, and I am here to indicate my full support for him, and I would like my statement included in the record.

I thank Mr. Dershowitz and others for letting me interrupt a very good discussion which I was listening to with great interest. I am not a cousin so I will be able to serve.

Senator HEFLIN. But you cannot recommend your wife.

Senator DOLE. That is right. I had not thought of that. Besides she went to Harvard, his student. Thank you very much.

Senator HEFLIN. All right. Thank you, Senator Dole. Your statement will——

Senator THURMOND. He did not have to recommend her. She got the appointment anyway.

Senator DOLE. That is right.

Senator THURMOND. Secretary of Labor.

[The statement of Senator Dole follows:]

REMARKS OF SENATOR DOLE

INTRODUCTION OF G.T. VAN BEBBER NOMINATED TO THE UNITED STATES DISTRICT COURT FOR KANSAS

MR. DOLE. MR. CHAIRMAN, MEMBERS OF THE COMMITTEE, AND SENATOR KASSEBAUM, IT IS A PLEASURE TO INTRODUCE G.T. "TOM" VAN BEBBER OF TOPEKA, KANSAS, NOMINEE TO SIT ON THE UNITED STATES DISTRICT COURT FOR KANSAS. I ALSO WELCOME HIS WIFE, ALLEEN (AL - LENE).

TOM VAN BEBBER, CURRENTLY SERVING AS UNITED STATES MAGISTRATE, BRINGS A LIFE-TIME OF EXPERIENCE IN PUBLIC SERVICE TO THIS RESPONSIBILITY. HE IS RESPECTED IN THE KANSAS LEGAL COMMUNITY, AND HAS THE UNANIMOUS RECOMMENDATION OF THE AMERICAN BAR ASSOCIATION.

A NATIVE OF TROY, KANSAS, A RURAL FARMING COMMUNITY IN NORTHEAST KANSAS, TOM HAS HELD RESPONSIBILITIES AS ASSISTANT UNITED ATTORNEY, AS A STATE LEGISLATOR, AND AS A MEMBER OF THE KANSAS CORPORATION COMMISSION.

A MAGISTRATE SINCE 1982, HE IS PRAISED BY PRACTICING ATTORNEYS, BY DISTRICT JUDGES, AND BY FELLOW MAGISTRATES FOR HIS SOUND UNDERSTANDING OF THE LAW, BOTH SUBSTANTIVE AND PROCEDURAL; HIS

INTELLECTUAL CAPACITY TO ANALYZE COMPLEX FACTS AND TO APPLY ABSTRACT LEGAL PRINCIPLES; HIS ABILITY TO ASSIMILATE FACTS AND MAKE TIMELY DECISIONS; HIS TEMPERAMENT WHICH BALANCES WISDOM, COMPASSION, AND UNDERSTANDING; HIS FAITHFULNESS TO THE PRINCIPLES OF JUDICIAL ETHICS; HIS PERSONAL INTEGRITY AND STAMINA; AND HIS LOYALTY TO THE UNITED STATES OF AMERICA.

TOM HAS DEMONSTRATED HIS ABILITY TO MEET A NUMBER OF CHALLENGES ALONG THE WAY AND CAN BE COUNTED UPON TO LEND HIS GENEROUS WIT AND HIS GOOD KANSAS SENSE TO THIS CHALLENGE. HE HAS MY HIGHEST RECOMMENDATION AND MY VOTE OF CONFIDENCE. I URGE SWIFT AND UNANIMOUS APPROVAL BY THE COMMITTEE.

Senator **Heflin**. All right. Go ahead, Senator Thurmond.

Senator **Thurmond**. I just started to ask this witness if he did not think this statute was designed for civil service employment practices?

Mr. **Dershowitz**. It was, Senator. The statute was clearly part of a postal reform statute, but the Congressmen and the Senators both said that while they were enacting a statute for postal and civil service, they wanted an across-the-board prohibition, and they specifically made it apply to the President, to the judiciary, and to all branches of Government, to all Government service. There was a specific decision made by the Congress to use the occasion of civil service and postal reform to write an across-the-board statute, and I think nobody will dispute that reading of the statute. That is universally accepted.

Senator **Thurmond**. Well, the judiciary, you know, is an independent branch of the Government over which the President exercises no jurisdictional control.

Mr. **Dershowitz**. Well, with due respect, of course, it is an independent branch of the Government.

Senator **Thurmond**. Otherwise the judiciary would be under the dominance of the President. You see judges handing down decisions—they handed down one when Truman was President. He seized the steel mills.

Mr. **Dershowitz**. Right.

Senator **Thurmond**. The Supreme Court struck it down, said you got no right to take private property without due process of law.

Mr. **Dershowitz**. And when——

Senator **Thurmond**. Now how do you account for that?

Mr. **Dershowitz**. Well, when the U.S. Supreme Court struck down New Deal legislation, the President decided to reassert control by nominating only judges who supported him on the New Deal. When President Reagan decided to nominate judges who held certain positions, it was in an attempt to exercise control over the judiciary. But my reading of the statute nonetheless suggests that the very act of making the nomination is sufficient control for purposes of an anti-nepotism statute, and that is what the statute is, an anti-nepotism statute. And when a President appoints his cousin, that violates the rules of nepotism.

Senator **Thurmond**. I believe you said the American Bar Association made a mistake in giving him that rating; did you?

Mr. **Dershowitz**. That is right. I do. I do believe that, yes.

Senator **Thurmond**. Do you think the Department of Justice then made a mistake when they cleared this man to be a judge?

Mr. **Dershowitz**. No; I do not see that. As I said, I do not think he is——

Senator **Thurmond**. The Department of Justice recommended him.

Mr. **Dershowitz**. Oh, I thought you meant—I think when the Department of Justice made the decision that the appointment would not violate the anti-nepotism statute, they did make a mistake in reading the statute. They also, by the way, did not announce, as far as I know, that they had made that determination, they did not tell the American public. I had to tell the American public essentially and the media had to tell the American public that this judge was the President's first cousin, something to which he has proudly pleaded guilty today and for which I congratulate him. But this was not something that was put out immediately on the public record so that the public could judge, and independent judgments could be made as to whether or not the statute applied. It seems to me it was an in-house decision, and with due respect I think an erroneous one.

Senator THURMOND. Well, the Department of Justice found that Judge Walker did not fall under the statute to be appointed to this position.

Mr. DERSHOWITZ. It would not be the first time——

Senator THURMOND. So you disagree with them?

Mr. DERSHOWITZ. Well, it would not be the first time either you or I agreed with the Department of Justice's reading of a statute.

Senator THURMOND. You do not agree with the American Bar Association. You do not agree with the Department of Justice, and you do not agree with the President for nominating him; do you?

Mr. DERSHOWITZ. I disagree with the President for nominating him. That is right.

Senator THURMOND. Well, thank you very much for coming.

Mr. DERSHOWITZ. Thank you very much.

Senator HEFLIN. Professor, Senator Specter would like for you to stick around because he has some questions when he arrives, if you do not mind. Senator Biden, the chairman of the committee, has asked me to read this letter into the record from the Chief Judge James L. Oakes of the U.S. Court of Appeals, the Second Circuit:

The change in the date of John Walker's confirmation hearing to tomorrow, November 7, leaves me in a bit of a bind as I had considered testifying in the event that Professor Dershowitz testifies against Judge Walker. Accordingly, I would appreciate it if this letter would be inserted in the record in the event that he does so testify.

I have known John Walker since he came to the district court in 1985. Everything he has done since that time has convinced me that he would make an eminently satisfactory addition to the second circuit court of appeals.

I can say that—with Professor Dershowitz excepted—I have never heard a single word of disparagement of Judge Walker's ability from his peers, his fellow district judges, the members of the court of appeals, or the bar generally. On the contrary, there has been with the exception of Professor Dershowitz, a unanimity of viewpoint that Judge Walker will make an excellent court of appeals judge. Some proof of this is, of course, in the high rating given him by the American Bar Association. But I also speak with personal acquaintance with his work and his high qualify.

To be sure, no judge is immune from reversal, and I was a member of the panel reversing Judge Walker in a case that Professor Dershowitz attorney-client relationship was critical to the case. While we held that the publication of Professor Dershowitz' book had not constituted a waiver of the attorney-client privilege to the same extent as Judge Walker had held, in fact, the case was a very close one and one on which reasonable judges could readily differ. I am sure that were you to take a vote among judges probably 50 percent or more would tend to agree with Judge Walker's outcome as opposed to that of the court of appeals.

In Professor Dershowitz' public letter writing campaign against Judge Walker, he has referred several times to a statute, being the anti-nepotism statute. To my mind, this reference is quite remarkable as it seems to me obvious on the face of the statute that it is inapplicable since a President does not exercise jurisdiction or control over the judicial branch. I suppose that the closest we in the judicial branch have to a person who exercised jurisdiction or control is the Chief Justice of the United States though that is most doubtful, but certainly it is not the President. I apologize for not being able to be present tomorrow afternoon. It was written.

[The letter of Judge Oakes follows:]

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UNITED STATES COURT OF APPEALS
SECOND CIRCUIT

CHAMBERS OF
JAMES L. OAKES
CHIEF JUDGE
BRATTLEBORO, VERMONT 05301-0696

November 6, 1989

Hon. Howell Heflin
United States Senate
728 Hart Senate Office Building
Washington, DC 20510-0101

Dear Senator Heflin:

The change in the date of John Walker's confirmation hearing to tomorrow, November 7, leaves me in a bit of a bind, as I had considered testifying in the event that Professor Dershowitz testifies against Judge Walker. Accordingly, I would appreciate it if this letter could be inserted in the record in the event he does so testify.

I have known John Walker since he came on the district court in 1985. Everything he has done since that time has convinced me that he would make an eminently satisfactory addition to the Second Circuit Court of Appeals.

I can say that -- with Professor Dershowitz excepted -- I have never heard a single word of disparagement of Judge Walker's abilities from his peers, his fellow district judges, the members of the court of appeals, or the bar generally. On the contrary, there has been -- with the exception of Professor Dershowitz -- unanimity of viewpoint that Judge Walker will make an excellent court of appeals judge. Some proof of this is, of course, in the high rating given him by the American Bar Association. But I also speak with personal acquaintance with his work and its high quality.

To be sure, no judge is immune from reversal, and I was a member of the panel reversing Judge Walker in _In re von Bulow_, 828 F.2d 94 (2d Cir. 1987), a case in which Professor Dershowitz's attorney-client relationship was critical to the case. While we held that the publication of Professor Dershowitz's book had not constituted a waiver of the attorney-client privilege to the same extent as Judge Walker had held, in fact the case was a very close one and one on which reasonable judges could readily differ. I am sure that were you to take a vote among judges, probably fifty percent or more would tend to agree with Judge Walker's outcome as opposed to that of the court of appeals.

In Professor Dershowitz's public letterwriting campaign against Judge Walker, he has referred several times to a statute, 5 U.S. § 3110. To my mind this reference is quite remarkable as it seems to me obvious on the face of the statute that it is inapplicable since a President does not "exercise[] jurisdiction or control" over the judicial branch. I suppose that the closest we in the judicial branch have to a person who "exercises jurisdiction or control" is the Chief Justice of the United States -- though that is most doubtful -- but certainly it is not the President.

I apologize for being unable to be present tomorrow afternoon.

Sincerely yours,

James L. Oakes

James L. Oakes
Chief Judge

cc Hon. Strom Thurmond

Senator HEFLIN. Do you have anything else you want to say, Professor?

Mr. DERSHOWITZ. Well, I certainly have the highest regard for Judge Oakes, and I do think that one of the great problems of a nepotistic appointment by the President is that it is very difficult to challenge an appointment that is likely to go through, that is made by the President of the United States. And I think the reason that I stand alone in opposing this nomination is a very tribute to the power of nepotism, and therefore, the fact that I am alone, publicly alone—by the way, I am not privately alone. I have gotten numerous calls and numerous letters, numerous inquiries and numerous statements of support, saying by many lawyers, we wish we had the courage to stand up against a presidential nomination of his cousin of an appointment that is likely to go through.

So I think the fact that there are many lawyers who are publicly supporting this nomination must be interpreted in light of the very evils of nepotism that we have spoken about previously, but I do have the highest respect for Judge Oakes, and I think he is probably right that this will make a satisfactory appointment. The question is whether or not that is enough, a satisfactory, even an eminently satisfactory appointment to the second circuit, when the reason for the appointment is a close relationship. And nobody to my mind has ever disputed, not Judge Oakes, not the Senators who introduced him, and not Judge Walker, has ever disputed the fact that were Judge Walker not the President's cousin he would not be the nominee for this position. Thank you very much for your attention, Senators.

Senator HEFLIN. All right. If you will——

Mr. DERSHOWITZ. I will.

Senator HEFLIN [continuing].—Keep yourself available for Senator Specter, we would appreciate it. We now go to Mr. Nelson from Alabama, the magistrate. If you will come forward, Mr. Nelson. Would you raise your right hand and repeat after me? Do you solemnly swear the testimony you will give in this case will be the truth, the whole truth and nothing but the truth, so help you God?

Mr. NELSON. I do.

Senator HEFLIN. All right. Would you like to introduce members of your family or friends that are with you?

TESTIMONY OF HON. EDWIN L. NELSON, BIRMINGHAM, AL. TO BE U.S. DISTRICT COURT JUDGE FOR THE NORTHERN DISTRICT OF ALABAMA

Mr. NELSON. Thank you, sir. I have my wife Linda who is here, our two children Pat and Allison who are sitting back, and Linda's sister and her husband, Mr. and Mrs. Jacque Deprimini who are also here, and we are glad to have them.

Senator HEFLIN. Thank you, sir. We are delighted to have members of your family present today. You have been a magistrate for 15 years. How do you expect that your work as a district judge will differ from your work as a magistrate, and how has being a magistrate helped prepare you for your new job?

Mr. NELSON. Mr. Chairman, as you say, I have served as U.S. magistrate for 15 years. Much of what I have done during that 15 years is very much similar to what our district judges have done. The variety has not been as great. A lot of the procedures have been very much similar. Dealing with the lawyers, managing cases, moving the cases along, I think that if I am confirmed, my duties as U.S. district judge will be more varied, perhaps more interesting because they are more varied. I feel that I am prepared to take on that additional responsibility and look forward to doing that if the Senate confirms me.

Senator HEFLIN. Mr. Nelson, the recent prison riots in Pennsylvania focused a lot of national attention on the situation in our Nation's prisons. In 1985 you had a pretty unusual personal experience with this issue. You were at a prison hearing, had a complaint about living conditions when a prison riot broke out. You have also heard a lot of petitioners, I mean a lot of prisoners' motions in your time as a magistrate. Based on your experience, what do you think are some of the major causes of these prison riots and can you offer any suggestions as to how we can help avoid them?

Mr. NELSON. Mr. Chairman, you are right. I did have a personal experience which I, and I must say I departed the scene as quickly as it was an opportunity to do so also.

Senator HEFLIN. With rapidity?

Mr. NELSON. Very quickly. I did not stop to ask where the door was. I looked for it. But Senator, I have seen several thousand, I am sure, cases filed by prisoners, most of them pro se, over the past 15 years. The variety of claims made by prisoners is broad as one might imagine. The reason for bringing those petitions, I think, range everywhere from absolutely legitimate complaints on the one side to the absolutely frivolous on the other and everything in between.

It seems to me that what we can do with prisons and prisoners that we have to take a firm hand and we have to make it clear that we are taking firm hand. We recognize that everybody has a right to present a claim to the court. We ought to deal with those claims quickly and deal with them fairly. Those that have merit we ought to recognize that merit and provide the appropriate relief. Those that are without merit, I think we ought to say so. I hope that answers your question, sir.

Senator HEFLIN. As a magistrate you were known for setting very stiff bail for defendants, particularly those charged with violent crimes. There has been a lot of debate in the Nation and in the Congress in recent years about our bail system, whether it is too lenient in many cases, whether it is consistent and so forth. Are there any systemic reforms that you would undertake relative to our current Federal bail system?

Mr. NELSON. Well, of course, as you know, the Congress just 5 years ago, I think it is now, in the most recent bail reform act, changed the provisions for the setting of bail in Federal criminal cases. It seems to me that that has worked reasonably well. It provided for the first time that I am aware of, other than in the District of Columbia, for pretrial detention of certain persons charged with offenses in Federal courts.

It seems to me that system is working reasonably well. I am not sure that we have had enough experience with it to decide that we ought to make major changes in it quite this early. It has only been in effect, like I say, I believe it is 5 years.

Senator HEFLIN. The American Bar has rated you qualified by unanimous vote of its Standing Committee on the Federal Judiciary. Senator Thurmond, do you have some questions?

Senator THURMOND. Thank you, Mr. Chairman. Mr. Nelson, you have served as U.S. magistrate for the Northern District of Alabama since 1974, I believe.

Mr. NELSON. That is correct.

Senator THURMOND. I am sure you have noticed an increase in the case load before the Federal District Court over the years. What in your opinion is needed to speed up the disposition of Federal cases?

Mr. NELSON. Senator Thurmond, it has been my observation and I have observed in our district judges, and I have participated in the management of cases, but it has been my observation that the judges whose case loads move expeditiously are those who take a firm hand in the management of the case. Now in doing that, you have to give due regard to the rights of the parties and the litigants—excuse me—the litigants and counsel. But the judges who move their cases are those who take a firm hand and see that they move rather than just letting them drift along.

So firm case management by the judge, I think, is important. We in court have moved in the last couple of years into automation, which I think is helpful. In addition, I think the judge needs to be constantly aware of effectively using the support staff available to the judge. Not only the judge's personal staff, but those in the clerk's office, and that the judge, I would urge all district judges to make full use of U.S. magistrates. I think that is a resource that some courts have used to full advantage; some others perhaps have not used as much as they could.

Senator THURMOND. And maybe working a little longer hours if necessary?

Mr. NELSON. Absolutely. I am proud to say I come to work about 7:30 in the morning and leave usually after six, and half or more of our district judges do the same thing.

Senator THURMOND. Well, the magistrate's work is very similar to the district judge. What is your jurisdiction?

Mr. NELSON. In our court we do everything provided by statute except civil trials by consent. The district judges of our court have never given us that jurisdiction. Other than that, we handle all the pretrial matters in all criminal cases. We handle many of the pretrial matters in civil cases.

We do, of course, the prisoner litigation that I alluded to before.

Senator THURMOND. Were you allowed to try any criminal cases and pass sentence?

Mr. NELSON. In misdemeanor cases with the consent of the defendant we try misdemeanor cases both with and without juries.

Senator THURMOND. So it is very similar to the district judge; is it not?

Mr. NELSON. Very much so, yes, sir.

Senator THURMOND. Do you feel that the U.S. magistrates are properly utilized or should they be given a greater role in the judicial system?

Mr. NELSON. Senator Thurmond, of course, there is a constitutional limitation on what non-Article III judges can do. It seems to me that the statute as it is presently written is fairly broad. It was amended, I believe, 10 years ago if my memory serves me, to broaden that jurisdiction. I am not sure other than perhaps some fine-tuning what could be done within the constitutional limitations. I would hope that district judges would become more aware of the advantages to themselves in the full utilization of the U.S. magistrates, and that they would take full advantage of magistrates.

Senator THURMOND. I think it would be well if the judicial counsel would look into that and maybe make some recommendations how they can better utilize these magistrates.

Mr. NELSON. I think something has been done along that line. I am not sure how much.

Senator THURMOND. Most of them are pretty intelligent people, are they not?

Mr. NELSON. The ones I have met are very intelligent, Senator.

Senator THURMOND. Mr. Nelson, I consider judicial temperament to be a prerequisite for Federal judge. I have seen some Federal judges embarrass lawyers and witnesses and people in the courtroom, jurors. No excuse in that. A Federal judge has all the power in the world, and the man with the most power ought to be the most humble. Do you agree with that?

Mr. NELSON. Absolutely, Senator. I believe that every person who comes into that courtroom, whether it is a lawyer or a party, whether it is a witness, court staff, the deputy marshal who is providing security, whoever is in that courtroom, is entitled to be treated with dignity and respect. I have always tried to do that, and if I am confirmed I intend to continue to try to do that.

Senator THURMOND. That is all, Mr. Chairman. Thank you.

Senator HEFLIN. Thank you, Mr. Nelson. We appreciate your being here.

Mr. NELSON. Thank you very much.

Senator HEFLIN. Thank you. Our next person is Mr. Van Bebber. If you will, sir, would you like to take the oath seated or standing? All right. Do you solemnly swear that the testimony you will give at this hearing will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. VAN BEBBER. I do.

Senator HEFLIN. Would you like to introduce members of your family or friends that might be with you?

TESTIMONY OF HON. G. THOMAS VAN BEBBER, TOPEKA, KS, TO BE U.S. DISTRICT COURT JUDGE FOR THE DISTRICT OF KANSAS

Mr. VAN BEBBER. I would, Mr. Chairman, thank you. I would like to introduce my wife Aileen, who is seated on the front row. Also here today is my cousin Judge William Winter, who is a judge of the Maryland Special Court of Appeals. He lives in Maryland and has come today, and his daughter is with him, Eleanor Winter Kerr. And seated beside her is a life long friend of mine from Troy, Kansas, where I grew up, Betty Lou Holt, and she lives in Silver Spring now but came to the hearing today.

Senator HEFLIN. All right, sir. As a magistrate, you worked a great deal on discovery issues. Many experts argue that one of the major forces behind the explosion in litigation cost particularly in civil proceedings is the abuse and overuse of the discovery process. Based on your experience, do you think it is true that the discovery process is frequently abused? What if anything should we do to improve discovery?

Mr. VAN BEBBER. Well, I do concur in that view that discovery is often abused. I think it is incumbent upon judges and magistrates to supervise discovery more carefully. We try to do it in our district, and I think we have done a fairly good job of keeping it under control. There are sanctions available for judges to exercise. They need to do it when it is appropriate, and when discovery abuses occur. We have adopted some discovery controls in our local rules of practice in the District of Kansas, which have been very effective, and further adoption of local rules to the extent that they are not in conflict with the Federal Rules of Civil Procedure would seem appropriate.

Senator HEFLIN. Many of our Federal courts are faced with serious and substantial backlog of cases. In your career as a magistrate you have handled a number of pretrial conferences in scheduling meetings. So you already have some experience with judicial efforts to speed along the docket. What other action do you think district judges can take to address this problem?

Mr. VAN BEBBER. Well, I would echo what Judge Nelson said just ahead of me that it does require an active role by the district judge in supporting the magistrate, in keeping the cases moving. It has been my experience that we get them rolling along pretty good at times, but on occasion perhaps the district judge could move it better if he took a little more active role.

Senator HEFLIN. Senator Thurmond, you have some questions?

Senator THURMOND. Mr. Van Bebber—is it Bebber?

Mr. VAN BEBBER. Yes, sir. Van Bebber.

Senator THURMOND. B-E-B-B-E-R?

Mr. VAN BEBBER. Correct.

Senator THURMOND. I believe you have served in several different capacities since you graduated from law school in 1955. You have been in private practice, Assistant United States Attorney, county attorney, House of Representatives in Kansas, and since 1982 you have been a U.S. magistrate; is that right?

Mr. VAN BEBBER. Yes.

Senator THURMOND. So you have had a lot of experience. Do you feel that these varied experiences will be beneficial to you as a U.S. district judge?

Mr. VAN BEBBER. Yes, I do, Senator. I think any experience that an individual has and particularly a lawyer has is valuable as his career moves along. I represented litigants on both sides of, whether plaintiffs or defendants, and that experience, I think, is valuable in understanding lawyers and particularly in understanding litigants and their problems, and to realize that the people who appear in court are real people.

Also being in politics and running for elective office is a humbling experience, or at least it was to me, and I think that stands me in good stead.

Senator **THURMOND**. Are there any circumstances under which a judge should attempt to decide a case on some basis other than one where the intent of the framers of legislation or constitutional provisions can be detected either through the text of a provision or a surrounding legislative history?

Mr. **VAN BEBBER**. I cannot think of one at this moment.

Senator **THURMOND**. How does a responsible judge go about the process of interpreting such seemingly open-ended constitutional provisions as a due process or equal protection clauses?

Mr. **VAN BEBBER**. Well, I think where those provisions are open-ended, there is where it is necessary for a judge to study legal precedence and to rely upon interpretations by the Supreme Court and the courts of appeal.

Senator **THURMOND**. I think you heard me, what I said about judicial activism.

Mr. **VAN BEBBER**. Yes, I did.

Senator **THURMOND**. Do you think you can restrain the temptation to exercise power beyond what is given to you under the Constitution to interpret the law?

Mr. **VAN BEBBER**. I think I can do that.

Senator **THURMOND**. I have no more questions. I wish you well, and I will be glad to support you.

Mr. **VAN BEBBER**. Thank you, Senator.

Senator **HEFLIN**. Thank you, sir. We wish you luck.

Mr. **VAN BEBBER**. Thank you, Mr. Chairman.

Senator **HEFLIN**. Our next nominee is Susan Webber Wright, nominated for the U.S. District Court for the East and West Districts of Arkansas. She has been a professor since 1983. If you will raise your right hand and repeat after me. Do you solemnly swear that the testimony you will give in this hearing will be the truth, the whole truth and nothing but the truth, so help you God?

Ms. **WRIGHT**. I do.

Senator **HEFLIN**. Would you like to introduce members of your family or friends that you have—that are here?

TESTIMONY OF SUSAN WEBBER WRIGHT, LITTLE ROCK, AR, TO BE U.S. DISTRICT COURT JUDGE FOR THE EASTERN AND WESTERN DISTRICT OF ARKANSAS

Ms. **WRIGHT**. Yes, Mr. Chairman, thank you. My husband, Robert Wright, is here with me today, and Mr. Jim Brandon of Washington, DC, but originally of Little Rock is here. And so is former magistrate—I am sorry—Bob Faulkner, who is now of the District of Columbia but was of Little Rock.

Senator **HEFLIN**. All right. Thank you. We appreciate your friends and your family being here. Ms. Wright, in the course of your career as a professor, you have written a large number of scholarly articles. Do you anticipate any difficulty in shifting from the world of academics to the day responsibilities of a Federal District Judge?

Ms. **WRIGHT**. No, sir, I do not believe that the transition will be any more difficult for me than it would be for a lawyer who has been in private practice and an advocate, and I have attempted to be patient and fair with my law students, and I am glad that I have the background of scholarly writing because I know that will be necessary for an effective Federal District Judge.

Senator HEFLIN. One of the—well, the only really complaint that anybody has voiced, and not necessarily in the sense of voicing it, but in reviewing your background, is the fact that you do not have any courtroom experience. What course of action do you think you ought to take to make up for that lack of experience?

Ms. WRIGHT. One of the things I plan to do if I am confirmed is consult with my friends who are right now serving in the eastern and western districts of Arkansas. I am happy to say that I am friends with all of the judges who are currently serving in that capacity. I have two boxes of materials that have been sent to me from the administrative office and from the Federal judicial center that I have started to study. And there are numerous legal education programs for judges that I plan to take full advantage of.

Senator HEFLIN. Judge Henry Woods of Arkansas phoned and put in a good word for you and indicated that he thought that you could make the transition very rapidly from the professorial background into the trial judge's position. I just thought I'd mention that.

Ms. WRIGHT. Thank you.

Senator HEFLIN. In some of your academic writings, you have shown a deep concern for the rights of the little guy in society. In a 1985 article on the fiduciary duties arising from oil and gas interests, for example, you argued that special duties may arise in circumstances when one person has power vis-a-vis another. I am sure that you agree that judges must closely follow and be bound by statutes, Presidents, and the Constitution.

Nonetheless, would you agree that there is a great deal of room for judges to exercise human judgment and considerations of compassion?

Ms. WRIGHT. Yes, sir, I agree with that.

Senator HEFLIN. Throughout your legal career you have focused a great deal of time and energy learning and writing about the field of oil and natural gas. As a district judge, of course, you will be responsible for hearing cases dealing with a wide variety of legal issues. Are there any lessons you have learned in your work on oil and gas issues that will help prepare you for your work on these other legal issues?

Ms. WRIGHT. I believe that legal analysis in oil and gas law can, the practice that I have learned, the scholarly skills that I have gained through examination of that subject matter has, I hope, given me the discipline to go into other areas that are of greater or equal complexity, and develop competence in those as they arise.

Senator HEFLIN. Thank you. Senator Thurmond.

Senator THURMOND. Thank you. I just have a couple questions. You do not think your lack of experience will affect you?

Ms. WRIGHT. No, sir, I do not. I worked for Judge Henley on the eighth circuit, and several times when I was working for him he sat by designation as a Federal district judge, and of course, I have been, I have watched trials before, and in fact, I have even appeared as a lawyer in the courtroom from time to time although I certainly would not profess to have developed the trial skills that an accomplished trial lawyer such as my good friend Henry Woods who the chairman just mentioned has.

On the other hand, my experience as a law professor, I hope, has helped me develop attributes of patience, and I hope a sense of fairness that will serve me well on the bench.

Senator THURMOND. You heard what I said about judicial activism?

Ms. WRIGHT. Yes, sir.

Senator THURMOND. Do you agree with me?

Ms. WRIGHT. Yes, sir.

Senator THURMOND. I do not think I have any other questions. Thank you very much. I wish you well. I will be glad to support you.

Ms. WRIGHT. Thank you.

Senator HEFLIN. Thank you. We appreciate your testimony. Senator Specter has sent word that he is on the floor and will be unable to be here. So we will adjourn this hearing. Thank you very much for attending.

[Whereupon, at 3:55 p.m., the committee adjourned.]

JOHN M. WALKER, JR.

Birth:	December 26, 1940	New York, New York
Legal Residence:	New York	
Marital Status:	Married	Katharine Kirkland
Education:	1958 - 1962	Yale University B.A. degree
	1963 - 1966	University of Michigan Law School J.D. degree
Bar:	1969	New York
Experience:	1966 - 1968	Africa-Asia Public Service Fellowship Republic of Botswana Attorney
	1969 - 1970	Davis, Polk & Wardwell Associate
	1970 - 1975	Assistant U. S. Attorney Southern District of New York
	1975 - 1981	Carter, Ledyard & Milburn Associate (1975-1977) Partner (1977-1981)
	1981 - 1985	Department of the Treasury Assistant Secretary Enforcement and Operations
	1985 - present	United States District Judge Southern District of New York
Office:	U.S. Courthouse 40 Foley Square New York, New York 10007 212 791-9125	
Home:	226 West 21st Street New York, New York 10011	

To be United States Circuit Judge for the Second Circuit

United States Senate
Committee on the Judiciary
Washington, DC 20510-6275

QUESTIONNAIRE FOR JUDICIAL NOMINEES

1. Full name (include any former names used.)

   John M. Walker, Jr.

2. Address: List current place of residence and office address(es).

   (H) 228 W. 21st Street, New York, NY 10011

   (O) U.S. Courthouse, 40 Foley Square,
   New York, NY 10007

3. Date and place of birth.

   December 26, 1940; New York, New York.

4. Marital Status (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es).

   Married. Katharine Kirkland
   Publishing Executive, Viking Penguin, Inc.
   40 West 23rd Street, New York, NY 10010

5. Education: List each college and law school you have attended, including dates of attendance, degrees received and dates degrees were granted.

Yale University	1958-1962	B.A. (6/62)
University of Michigan	1963-1966	J.D. (6/66)

6. Employment Record: List (by year) all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including firms, with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.

1985-Present	U. S. District Judge Southern District of New York 40 Foley Square New York, NY

1981-1985	Assistant Secretary of the Treasury (Enforcement and Operations) Department of the Treasury Washington, DC
1975-1981	Associate and Partner Carter, Ledyard & Milburn 2 Wall Street New York, NY
1970-1975	Assistant U.S. Attorney U.S. Attorney's Office Southern District of New York 1 St. Andrew's Plaza New York, NY
1969-1970	Associate Davis, Polk & Wardwell One Chase Manhattan Plaza New York, NY
1966-1968	State Counsel Attorney General Republic of Botswana P/B 9 Gaberones, Botswana

7. Military Service: Have you had any military service? Yes. If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received.

   2/1963-8/1967 U.S. Marine Corps Reserves
   Serial #1950502. Honorable discharge.
   PFC.

8. Honors and Awards: List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.

   Torch Honor Society, Yale University (1962)
   Hessel Yntema Award in Comparative Law,
     University of Michigan (1966)
   Africa-Asia Public Service Fellowship,
     Maxwell School of Public Administration,
     Syracuse University (1966)
   Secret Service Honor Award, (1985)
   Alexander Hamilton Award, U.S. Department of
     Treasury (1985)

9. Bar Associations: List all bar associations, legal or judicial-related committees or conferences of which you are or have been a member and give the titles and dates of any offices which you have held in such groups.

Association of the Bar of the City of New York
American Bar Association
District of Columbia Bar Association
Fund for Modern Courts (Chairman, Committee on Goals; 1979-1981)
National Council on Crime and Delinquency (General Counsel; 1977-1981)
Federal Judges Association (Director; 1986-date)

10. Other Memberships: List all organizations to which you belong that are active in lobbying before public bodies: Federal Judges Association.

Please list all other organizations to which you belong.

Heights Casino, Brooklyn, New York
(social and athletic club)

11. Court Admission: List all courts in which you have been admitted to practice, with dates of admission and lapses if any such memberships lapsed. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which required special admission to practice.

New York Supreme Court 6/69
U.S. District Court (SDNY) 2/71
U.S. Court of Appeals (2d Cir.) 11/72
U.S. Supreme Court 9/77
U.S. Court of Appeals (D.C. Cir.) 10/82

12. Published Writings: List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited. Please supply one copy of all published material not readily available to the Committee. Also, please supply a copy of all speeches by you on issues involving constitutional law or legal policy. If there were press reports about the speech, and they are readily available to you, please supply them.

Proving Federal Crimes, (1970) (Contributing Author)
(a manual for prosecutors no longer print)
United States v. Sells: Engineering a Result to Promote Grand Jury Secrecy, 21 American Crim. L. Rev. 99 (1982)

The Current Constitutional Debate, Remarks to The Little Forum, Bronxville, New York (1986)

Have the Courts Functioned as the Framers Intended, Remarks to the Second Circuit Judicial Conference (1987)

Runyon and Patterson: The Application of Stare Decisis, Remarks to the Putnam County Bar Association (1988)

Decisionmaking in Government: A Personal Perspective, Remarks to the Administrative Conference of the United States, reprinted in the Federal Bar News & Journal Vol. 36, No. 7 (9/89)

13. Health: What is the present state of your health? List the date of your last physical examination.

Excellent. August 10, 1989.

14. Judicial Office: State (chronologically) any judicial offices you have held, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

1985-date	U.S. District Judge, Southern District of New York Appointed. Federal question and diversity jurisdiction at the trial level.

15. Citations: If you are or have been a judge, provide: (1) citations for the ten most significant opinions you have written; (2) a short summary of and citations for all appellate opinions where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings; and (3) citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, please provide copies of the opinions.

See Attachment No. 15.

16. Public Office: State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. Stated (chronologically) any unsuccessful candidacies for elective office.

1970-1975	Assistant U.S. Attorney, Southern District of New York Appointed.
1981-1985	Assistant Secretary of the Treasury Appointed.

17. Legal Career:

a. Describe chronologically your law practice and experience after graduation from law school including:

1. whether you served as a clerk to a judge, and if so, the name of the judge, the court, and the dates of the period you were a clerk; No.

2. whether you practiced alone, and if so, the addresses and dates; No.

3. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been connected, and the nature of your connection with each; See No. 6. supra.

b. 1. What has been the general character of your law practice, dividing it into periods with dates if its character has changed over the years?

From 1981 to 1985, I held a senior policy position in federal law enforcement with responsibility for the management, policy direction and supervision of Treasury's law enforcement bureaus: the U.S. Customs service (Customs), the U.S. Secret Service, the Bureau of Alcohol, Tobacco and Firearms (BATF), the Federal Law Enforcement Training Center and the Office of Foreign Assets Control While I did not practice law as such, I dealt with legal issues arising from the financial settlements between the United States and Iran following the hostage crisis, the issuance of numerous regulations by BATF governing the alcohol, tobacco and firearms industries, and by Customs governing the handling of imports and exports and the activities of import and export firms. I also maintained policy oversight for Treasury of certain litigation affecting Treasury enforcement programs including two cases in the Supreme Court, Dames & Moore v. Regan and Wald v. Regan dealing with the Iranian assets settlement and the issuance of Treasury regulations affecting travel to Cuba respectively.

From 1969 to 1981, my law practice was exclusively in litigation almost entirely in federal courts and principally in the District Court for the Southern District of New York and the Second Circuit Court of Appeals.

From 1969 to 1970, as an Associate at Davis, Polk & Wardwell, I supported the firm's partners in a variety of corporate and commercial litigated matters, including the preparation of pleadings and motions, drafting memoranda and conducting discovery.

From 1970 to 1975, I conducted an active trial practice as an Assistant U.S. Attorney in the Criminal Division of the U.S. Attorney's Office in the Southern District of New York.

From 1970 to 1981, first as an Associate and then a Partner at Carter, Ledyard & Milburn, my litigation practice continued with an emphasis on civil matters. During this period, I tried two civil cases to judgment and litigated several others through motions to a settlement. I continued my practice in criminal litigation primarily through participation in the Southern District panel for the representation of indigents. In that capacity, I defended one narcotics case before a jury.

2. Describe your typical former clients, and mention the areas, if any, in which you have specialized.

During the period of private practice during 1975 to 1981, as indicated above, my specialty was in general civil litigation. My typical clients included a bank, a construction consulting firm, a textile manufacturer, an international ship and container leasing firm

17. b-2. (Continued)

and a media conglomerate for whom I conducted a varied range of litigation in state and federal courts in New York and elsewhere.

c. 1. Did you appear in court frequently, occasionally, or not at all? If the frequency of your appearances in court varied, describe each such variance, giving dates.

1969-1970 - Less regularly.
1970-1975 - Regularly.
1975-1981 - Less regularly.
1981-1985 - Not at all.

2. What percentage of these appearances was in

	1969-70	1970-75	1975-81
(a) federal courts	50%	100%	80%
(b) state courts of record	50%		20%
(c) other courts	-	-	-

3. What percentage of your litigation was

	1969-70	1970-75	1975-81
(a) civil	100%	-	90%
(b) criminal	-	100%	10%

4. State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

I tried approximately 30 cases to verdict or judgment during the period 1970-1981. Of these 3 were as associate counsel, approximately 12 as chief counsel and the remainder as sole counsel.

5. What percentage of these trials was:

(a) Jury	75%
(b) Non-jury	25%

18. Litigation: Describe the ten most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

    (a) the date of representation;[1]
    (b) the name of the court and the name of the judge before whom the case was litigated; and
    (c) the individual name, address and telephone numbers of co-counsel and of counsel for each of the other parties.

(1) Watts v. DesMoines Register and Tribune Co.
U.S. District Court (S.D. Iowa)
Honorable William C. Stuart
Opposing Counsel: Robert B. Schism, Esq.
Scalise, Schism, Sandre & Uhl
2910 Grand Ave., DesMoines, Iowa
Telephone: (515) 282-2910

Minority shareholders brought an action against the corporation and its directors, alleging breach of fiduciary duties, violations of Rule 10b-5 promulgated under the Securities Exchange Act, and other counts, to set aside a voting trust established by the directors to protect the corporation from a hostile takeover, to recover monies for the corporation in connection with alleged improper corporate transactions and alleged improper stock purchases by directors pursuant to the corporation's stock purchase plan. The case presented, *inter alia*, the broad question of the power of a committee of the Board of Directors to direct the discontinuance of a shareholder derivative action as not being in the best interest of the corporation or its shareholders. As lead litigating counsel for the directors, I successfully tried a motion for preliminary injunction, engaged in various stages of motion practice and discovery, and filed a motion for summary judgment. I discontinued this representation upon entering government in 1981. The court later granted partial summary judgment reported at 525 F.Supp. 1311 (D.C. Iowa 1981). The case was ultimately settled before trial.

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[1] I do not have ready access to records of precise trial dates. The answers reflect my best recollection.

(2) United States v. Rackley Trial 11/78
U.S. District Court (S.D.N.Y.)
Honorable Mary Johnson Lowe
Opposing Counsel: Daniel H. Bookin, Esq.
Farella, Braun & Marte
235 Montgomery Street
San Francisco, California
Telephone: (415) 981-3722

The U.S. Attorney charged the defendant, for whom I was sole counsel at a jury trial, with two counts of selling heroin to an undercover agent. The principal issue in the case was one of identification. Based largely upon substantial discrepancies between descriptions of the defendant in investigative reports and his actual appearance, the delay of about one month in effecting the arrest and the fact that none of the arresting officers physically observed the defendant prior to his arrest, the jury acquitted the defendant.

(3) United States Trust Co. v. Stark Trial 8/77
U.S. District Court (S.D.N.Y.)
Honorable Edward Weinfeld
Opposing Counsel: Daniel A. Pollack, Esq.
61 Broadway
New York, NY
Telephone: (212) 952-0330

Beneficiaries of four inter vivos and testamentary trusts brought a diversity action in federal court alleging breach of fiduciary duty by the United States Trust Company of New York, whom I represented as lead counsel, in retaining three stocks that declined approximately 90% in value. The case raised legal issues under New York State law governing investment actions by trustees as well as factual issues as to the practices and procedures of the bank and the portfolio manager involved. Following a bench trial, Judge Weinfeld rendered judgment in favor of the defendant. The court's decision is reported at 445 F. Supp. 670 (S.D.N.Y. 1978).

(4) United States Trust Co. v. McEntee Trial 2/77
New York Supreme Court (Nassau County)
Honorable Eli P. Wager
Opposing Counsel: John J. Barnosky, Esq.
22 Jericho Turnpike
Mineola, New York
Telephone: (516) 741-1111

A guardian ad litem brought a state court action against the United States Trust Company of New York, whom I represented as lead counsel, for alleged lack of prudent trust management in retaining securities which substantially declined in value thereby depleting the value of the trust. The case presented the question whether and under what circumstances, if any, the prudent man rule in New York includes a duty to diversify trust assets. Following a bench trial, the court rendered judgment in favor of the defendant.

(5) United States v. Blitz, et al. Trial 2/75
U.S. District Court (S.D.N.Y.)
Honorable Dudley B. Bonsal
Opposing Counsel: Paul K. Rooney, Esq.
26 Broadway, New York, NY
Telephone: (212) 269-4420

H. Elliot Wales, Esq.
630 Third Avenue, New York, NY
Telephone: (212) 682-6806

Edward Brodsky, Esq.
280 Park Avenue, New York, NY
Telephone: (212) 286-4000

The government, for whom I was lead counsel during the investigation and jury trial (the appeal was argued after I had returned to private practice), charged various defendants with conspiracy, and violations of the Securities Exchange Act and the Investment Advisors Act in connection with a complex scheme to manipulate the price of the stock of Elinvest, Inc. through a boiler-room operation and the bribing of brokers and a fund manager to engage in Elinvest transactions. The convictions of four defendants were affirmed by the Second Circuit Court of Appeals whose opinion is reported at 533 F.2d 1329 (2d Cir. 1976).

(6) United States v. Segal, et al. Trial 11/74
U.S. District Court (S.D.N.Y.)
Honorable Lloyd F. McMahon
Opposing Counsel: John H. Doyle, III, Esq.
666 Third Avenue, New York, N.Y.
Telephone: (212) 850-0753

The government, for whom I was lead counsel during the investigation and jury trial (the appeal was argued after I had returned to private practice), charged various defendants with conspiracy and securities fraud in connection with the fraudulent promotion and selling of the stock of Pioneer Development Corporation. The convictions of four defendants were affirmed on appeal, sub nom United States v. Finkelstein, 526 F.2d 517 (2d Cir. 1975) in a landmark opinion on the important question of when jointly indicted defendants are entitled to a severance. The court's opinion commented on the quality of the investigation, at page 526.

(7) United States v. Weisman Trial 10/74
U.S. District Court (S.D.N.Y.)
Honorable Charles M. Metzner
Opposing Counsel: Milton S. Gould, Esq.
330 Madison Ave., New York, N.Y.
Telephone: (212) 370-8000

The government, whom I represented as sole counsel at a jury trial, charged the defendant, an attorney, with a stock fraud scheme designed to benefit various members of organized crime. The principal question revolved about the defendant's knowledge and intent and required overcoming the defendant's denials with a demonstration of his extensive associations with organized crime figures. His conviction was affirmed on appeal without the issuance of a reported opinion.

Trial 8/72

(8) United States v. Manfredi
U.S. District Court (S.D.N.Y.)
Honorable Harold R. Tyler, Jr.
Opposing Counsel: Irving Anolik, Esq.
225 Broadway, New York, NY
Telephone: (212) 732-3050

Daniel Greenberg, Esq.
122 East 42nd St., New York, NY
Telephone: (212) 661-2910

Lewis Alperin, Esq.
22 West First St., Mt. Vernon, NY
Telephone: (914) 664-8400

The government, whom I represented as lead counsel at a jury trial and on appeal, charged ten defendants, who operated a heroin ring, with a narcotics conspiracy and various substantive counts including the first use on record of the Continuing Criminal Enterprise statute. The trial was steeped in violence. Shortly before or after trial, three co-conspirators were murdered and two others were shot at. The case raised important questions concerning the minimization requirement in the use of wiretaps. Nine defendants were convicted and their convictions were affirmed by the Second Circuit Court of Appeals in a reported opinion at 488 F.2d 588 (2d Cir. 1973).

Trial 4/72

(9) United States v. Ortega, et al.
U.S. District Court (S.D.N.Y.)
Honorable Lawrence W. Pierce
Opposing Counsel: Ivan S. Fisher, Esq.
442 East 58th St., New York, NY
Telephone: (212) 288-0010

The government, whom I represented as sole counsel at a jury trial, charged three defendants with conspiracy to import 200 pounds of heroin concealed in a Jaguar from France via England into New York aboard the Queen Elizabeth II. The case raised questions of intent and knowledge on the part of the defendants, issues of search and seizure, and questions regarding the circumstances under which the government might be required to furnish the identity of an informant. The convictions of the three defendants were upheld on appeal in a reported opinion at 471 F.2d 1350 (2d Cir. 1972) in which the court commented on the quality of the prosecution at page 1363. Due to a scheduling conflict, the appeal was handled by another attorney.

(10) United States v. Pacelli, et al   Trial 2/72
U.S. District Court (S.D.N.Y.)
Honorable Milton Pollack
Opposing Counsel: E. Barrett Prettyman, Jr., Esq.
Hogan & Hartson
815 Connecticut Ave., N.W.
Washington, DC 20006
Telephone: (202) 331-4685

Elliot A. Taikeff, Esq.
227 E. 57th St. New York, NY
Telephone: (212) 966-1000

The government, whom I represented as lead counsel at a jury trial and on appeal, charged the defendants with a narcotics conspiracy and substantive counts. A few days before the trial, a government witness was murdered. At trial, another witness recanted her prior testimony implicating the accused, and other witnesses changed their testimony or refused to testify. Principal questions dealt with the sufficiency of the evidence to send the case to the jury and the admissibility of a prior unsworn statement of the recanting witness. The convictions of the two defendants were affirmed on appeal in a reported opinion at 470 F.2d 67 (2d Cir. 1972).

19. Legal Activities: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe the nature of your participation in this question, please omit any information protected by the attorney-client privilege (unless the privilege has been waived.)

As Assistant Secretary of Treasury (Enforcement and Operations), my work included sanctions against major banks for violating the Bank Secrecy Act and proposing legislation to combat money laundering; imposing major civil sanctions for customs fraud; establishing Organized Crime and Drug Enforcement Task Forces; heading Treasury's review of the Secret Service following the 1981 assassination attempt on President Reagan; developing Operation Exodus with Customs to stem the flow of high technology to the East Bloc and implementing the claims settlement agreement with Iran following the hostage crisis. Legal considerations as to the foregoing, as well as any resulting litigation, were a substantial concern of my office.

II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients, or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.

   N/A

2. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated.

   I will continue to follow the procedures in accordance with the Code of Judicial Conduct including the procedure I have employed as a District Judge of screening each matter on initial assignment to identify any potential conflict of interest. Upon identification, I will determine whether any conflict is real or apparent in which case immediate recusal will follow. A potential conflict could be presented by any case affecting the value of a security or real estate held by me or my spouse.

3. Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

   I plan to continue as Special Counsel to the Administrative Conference of the United States without compensation. Otherwise the answer is no.

4. List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding $500 or more (If you prefer to do so copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here.)

   See Financial Disclosure Reports covering the period 1/1/88 to 9/2/89 attached hereto as Attachment II-4.

5. Please complete the attached financial net worth statement in detail (Add schedules as called for).

   See Attachment II-5.

6. Have you ever held a position or played a role in a political campaign? if so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

   Yes. From 1978-1980, I was active in the campaign of George Bush for President and after his nomination as Vice President, Ronald Reagan for President. As Assistant Secretary of the Treasury, appointed by the President, from time to time I spoke on behalf of Congressional candidates. All political activities ceased upon my becoming a District Judge in 1985.

III. GENERAL (PUBLIC)

1. An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

    In private practice I worked for community legal services assisting indigent tenants and was a member of the panel of attorneys for assignments pursuant to the Criminal Justice Act to defend indigent criminal defendants.

2. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion. Do you currently belong, or have you belonged, to any organization which discriminates -- through either formal membership requirements or the practical implementation of membership policies? If so, list, with dates of membership. What you have done to try to change these policies?

    At the time I became a District Court Judge in 1985, I resigned memberships in the Metropolitan Club in Washington, D.C. and the Links Club in New York, New York. At the time neither club admitted women members.

3. Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, did it recommend your nomination? Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and interviews in which you participated).

    As District Court Judge I was recommended by the Judicial Selection Committee of Senator D'Amato, who recommended my appointment to President Reagan.

    My interest in a position on the Court of Appeals developed after discussions in early 1989 with judges on the Court of Appeals and the District Court in which I sit and members of the New York Bar. This interest was communicated to the Justice Department in the Spring of 1989, as well as to the office of the White House Counsel. In June 1989, the Justice Department interviewed me and commenced appropriate Federal Bureau of Investigation and American Bar Association background checks. I have been interviewed by both entities.

4. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as asking how you would rule on such case, issue, or question? If so, please explain fully.

   No.

5. Please discuss your views on the following criticism involving "judicial activism."

   The rule of the Federal judiciary within the Federal government, and within society generally, has become the subject of increasing controversy in recent years. It has become the target of both popular and academic criticism that alleges that the judicial branch has usurped many of the prerogatives of other branches and levels of government.

   Some of the characteristics of this "judicial activism" have been said to include:

   a. A tendency by the judiciary toward problem-solution rather than grievance-resolution;

   b. A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals;

   c. A tendency by the judiciary to impose broad, affirmative duties upon governments and society;

   d. A tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness; and

   e. A tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.

   I share the concerns over "judicial activism" as set forth in this question. In my view, it is the province of the judiciary to interpret the law as it exists and not to "legislate". Since it is the province of elected officials to give expression to the popular will through legislative enactments, the unelected judiciary, in interpreting law, should adhere to the language and intent of the legislative enactment. The judiciary should exercise great restraint in holding the actions of popularly elected legislatures unconstitutional. The Constitution should be viewed by the judiciary as a source of carefully developed legal doctrine and not as a basis for the imposition of personal policy choices of judges upon society or as a vehicle for resolving political issues properly left to legislatures.

Attachment II-5.

CONFIDENTIAL FINANCIAL STATEMENT

NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS	
Cash on hand and in banks	10,000
U.S. Government securities—add schedule	
Listed securities—add schedule I	370,000
Unlisted securities—add schedule II	25,000
Accounts and notes receivable:	
Due from relatives and friends	0
Due from others	0
Doubtful	0
Real estate owned—add schedule III	990,000
Real estate mortgages receivable	0
Autos and other personal property	[illegible],000
Cash value—life insurance	[illegible],000
Other assets—itemize:	
Furniture Antiques	30,000
Spouses IRA at	
Seligman Co. (Exclusive-	100,000
ly in commercial paper)	
Total assets	1,575,000

LIABILITIES	
Notes payable to banks—secured	0
Notes payable to banks—unsecured	0
Notes payable to relatives	0
Notes payable to others	0
Accounts and bills due	0
Unpaid income tax	0
Other unpaid tax and interest	0
Real estate mortgages payable—add schedule IV	126,000
Chattel mortgages and other liens payable	0
Other debts—itemize:	
Total liabilities	126,000
Net worth	1,449,000
Total liabilities and net worth	1,575,000

CONTINGENT LIABILITIES	None
As endorser, comaker or guarantor	
On leases or contracts	
Legal Claims	
Provision for Federal Income Tax	
Other special debt	

GENERAL INFORMATION

Are any assets pledged? (Add schedule.) No.

Are you defendant in any suits or legal actions? No.

Have you ever taken bankruptcy? No.

SCHEDULE I

LIST OF SECURITIES

(Total Value $370,000)

No. of Shares	Security
312	Southwestern Public Service
1399	UJB Financial Corp.
300	Browning-Ferris Industries, Inc.
200	Ford Motor Co.
200	Olin Corp.
1650	Rouse Co.
300	Sun Microsystems, Inc.
250	Super Valu Stores
210	Sysco Corp.
2400	Wal-Mart Stores, Inc.
300	XL Datacomp, Inc.
2	Intl. Imaging Materials, Inc.
400	Boatmens Banchares, Inc.
400	Bristol Myers Co.
550	Continental Health Affilates
800	Dun & Bradstreet Corp.
204	Intl. Flavors & Fragrances, Inc.
720	Kaman Corp. Class A

SCHEDULE II

UNLISTED SECURITIES

(Total Value $25,000)

No. of Shares	Securities
2	International Imaging Materials, Inc.

ATTACHMENT II-5 (continued)

SCHEDULE III

Property		Value
228 W. 21st Street New York, NY		$550,000
Lew Beach, NY		$310,000
Maritimes Condo Stuart, Florida		$130,000
	Total	$990,000

SCHEDULE IV

Mortgage held by Citicorp Mortgage, Inc. St. Louis, Mo. (Maritimes Condo, Stuart Florida)	$126,000

AMERICAN BAR ASSOCIATION
Standing Committee on Federal Judiciary
1800 M Street, NW
Washington, DC 20036
(202) 331-2230

CHAIRMAN
Harold R. Tyler, Jr.
30 Rockefeller Plaza
New York, NY 10112

FIRST CIRCUIT
Ralph I. Lancaster, Jr.
One Monument Square
Portland, ME 04101

SECOND CIRCUIT
William E. Willis
125 Broad Street
New York, NY 10004

THIRD CIRCUIT
Jerome J. Shestack
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FOURTH CIRCUIT
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Norfolk, VA 23502

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Austin, TX 78701

SIXTH CIRCUIT
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Columbus, OH 43215

SEVENTH CIRCUIT
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Suite 4300
One IBM Plaza
Chicago, IL 60611

EIGHTH CIRCUIT
James W. Hewitt
Post Office Box 80268
1815 Y Street
Lincoln, NE 68501

NINTH CIRCUIT
J. David Andrews
40th Floor
1201 Third Avenue
Seattle, WA 98101-3099

Ronald L. Olson
35th Floor
355 South Grand Avenue
Los Angeles, CA 90071

TENTH CIRCUIT
Arthur D. Melendres
Sunwest Building
Suite 1000
Post Office Box 2168
Albuquerque, NM 87103

ELEVENTH CIRCUIT
Sylvia H. Walbolt
Post Office Box 3239
Tampa, FL 33602

DISTRICT OF COLUMBIA CIRCUIT
James J. Bierbower
1308 19th Street, NW
Washington, DC 20036

FEDERAL CIRCUIT
John D. Lane
Suite 1100
1666 K Street, NW
Washington, DC 20006

BOARD OF GOVERNORS LIAISON
Robert MacCrate
28th Floor
125 Broad Street
New York, NY 10004

STAFF LIAISON
Irene R. Emsellem
American Bar Association
1800 M Street, NW
Washington, DC 20036
(202) 331-2230
ABA/NET ABA 361

CONFIDENTIAL

September 29, 1989

Hon. Joseph R. Biden, Jr.
Chairman, Committee on the Judiciary
United States Senate
SD 224
Washington, D.C. 20510-0802

RE: HON. JOHN M. WALKER, JR.
United States Court of Appeals for the
Second Circuit

Dear Senator Biden:

Thank you for affording this Committee an opportunity to express an opinion pertaining to the nomination of Judge John M. Walker, Jr. for appointment as Judge of the United States Court of Appeals for the Second Circuit.

Our Committee is unanimously of the opinion that Judge Walker is Well Qualified for this appointment.

A copy of this letter has been sent to Judge Walker for his information.

Sincerely,

Ralph Lancaster

Ralph I. Lancaster, Jr.
Chairperson

RIL/sm

cc All Committee Members
Hon. John M. Walker, Jr.
Barbara Drake, Esq.

EDWIN L. NELSON

Birth:	February 10, 1940	East Brewton, Alabama
Legal Residence:	Alabama	
Marital Status:	Married	Linda Janes Mayes Nelson 2 children
Education:	1962 - 1963	University of Alabama
	1965 - 1966	Samford University
	1967 - 1969	Samford University Cumberland School of Law LL.B. degree
Bar:	1969	Alabama
Military Service:	1958 - 1962	United States Navy
Experience:	1969 - 1973	French & Nelson Partner
	1974	Sole practitioner Fort Payne, Alabama
	1974 - present	United States Magistrate Northern District of Alabama
Office:	Hugo Black United States Courthouse 1729 5th Avenue North Birmingham, Alabama 35203 205 731-1720	
Home:	3728 River Bend Lane Birmingham, Alabama 35223	

To be United States District Judge for the Northern District of Alabama

I. BIOGRAPHICAL INFORMATION (PUBLIC)

1. **Full name (include any former names used.)**

Edwin Levon Nelson
419-44-3993

2. **Address: List current place of residence and office address(es).**

Home: 3728 River Bend Lane
Birmingham, Alabama 35223

Office: Room 275
Hugo L. Black United States Courthouse
Birmingham, Alabama 35203
(205) 731-1720
(FTS) 229-1720

3. **Date and place of birth.**

February 10, 1940
East Brewton, Escambia County, Alabama

4. **Marital Status (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es).**

I was married to Linda Jane Mayes at the Darnestown Presbyterian Church, Darnestown, Maryland on December 27, 1965. We have been continuously married and have lived together since that date. Mrs. Nelson has not been employed outside our home since July, 1969.

5. **Education: List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.**

University of Alabama
Tuscaloosa, Alabama 35487
June, 1962 to May, 1963

I did not receive a degree from the University of Alabama. I left the University in May, 1963 to earn enough money to return later. In January, 1964, I was given an opportunity for full-time employment with the Republican Party of Jefferson County, Alabama to work in the presidential campaign of that year. I accepted with the understanding that I would work for one year before returning to school. In January, 1965, I entered Samford University in Birmingham.

Samford University
Birmingham, Alabama 35209
February, 1965 to May, 1966

I did not receive an undergraduate degree from Samford University. I entered this school intending to pursue a program which would permit me to enter the law school after three years of undergraduate work and receive a bachelor's degree after the first year of law school. Because of a misunderstanding on my part, at the end of my first year in law school I learned that though I had the requisite number of credits, I lacked either one or two required courses. The Dean of the law school gave me the option to continue to pursue an LLB without the undergraduate degree. My wife and I jointly elected to pursue that choice.

Cumberland School of Law of Samford University
Birmingham, Alabama 35209
January, 1967 to August, 1969

I was awarded an LLB in August, 1969.

University of Alabama
New College, External Degree Program
Tuscaloosa, Alabama 35487

I am presently enrolled in the External Degree Program at the University of Alabama. I have one course for which I have not yet received a grade. After that is received I will have but to complete a senior project consisting of twelve semester hours work in order to earn a bachelor's degree. Provided my judicial duties permit, I expect to complete that project and receive a degree by May, 1990.

6. **Employment Record: List (by years) all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including firms, with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.**

French & Nelson
Attorneys at Law
308 Alabama Avenue S. W.
Fort Payne, Alabama, 35967
September, 1969 until December, 1973
Partner

Edwin L. Nelson
Attorney at Law
116 1st Street S. W.
Fort Payne, Alabama 35967
January, 1974 until October 13, 1974
Sole practitioner

Alabama corporations law required a minimum of three incorporators in order to establish a corporation. It was a fairly common practice, when incorporating small family businesses, for lawyers to list themselves as incorporators in order to have the required minimum number. I have no specific memory of having done so, but I believe I may have been so listed on some corporations. Any such situations would have been prior to October 14, 1974. I have had no interest in any such corporations since my appointment to my present position.

7. **Military Service: Have you had any military service? If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received.**

I served on active duty with the United States Navy as an enlisted man from July, 1958 until June, 1962. I was released from active duty as an Electronics Technician Second Class. After two years in the inactive reserve, I was honorably discharged. My service number was 5310028. I have no present association with any branch of the military and have no further military obligation.

8. **Honors and Awards: List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.**

Phi Alpha Theta
(history honorary)

Pi Gamma Mu
(social sciences honorary)

9. **Bar Associations: List all bar associations, legal or judicial-related committees or conferences of which you are or have been a member and give the titles and dates of any offices which you have held in such groups.**

American Bar Association	1968 to 1976
Alabama Bar Association	1969 to present

Birmingham Bar Association	1975 to the present
Dekalb County Bar Association	1969 to 1974 Secretary-Treasurer Vice-president President
Eleventh Circuit Association of United States Magistrates	1988 to present President
Phi Alpha Delta (legal fraternity)	12-67 to present
National Council of United States Magistrates	1975 to present (member By-laws Committee 1989)

10. **Other Memberships: List all organizations to which you belong that are active in lobbying before public bodies. Please list all other organizations to which you belong.**

I have been a member of the National Association of United States Magistrates since 1975. The Association has been active in urging the Congress to provide better retirement benefits and salaries for United States Magistrates in particular and the federal judiciary in general. My only personal activity of that type was a letter I wrote to Congressman William L. Dickinson approximately two years ago in which I urged his support for then pending retirement legislation to benefit United States Magistrates and United States Bankruptcy Judges.

Member from to	Names of Organization	Nature of Affiliation	Location
6-82 to 1-88	Boy Scout Troop 320	Troop Committee member Troop Committee Chairman Asst. Scout Master	Birmingham, Alabama
8-86 to 5-89	P.T.A.	Member	Mountain Brook High Mountain Brook, Alabama
8-83 to 5-89	P.T.A.	Member	Mountain Brook Jr. High Mountain Brook, Alabama
8-77 to 1-79	P.T.A.	Member	Mountain Brook Elementary Mountain Brook, Alabama
1-79 to 5-83	P.T.A.	Member 3rd Vice-President	Brookwood Forrest Elementary School
8-83 to 5-86	Advent Parent's Org.	Member	Advent Episcopal Day School Birmingham, Alabama
8-86 to 5-89	Athletic Boosters Club	Member	Mountain Brook High Mountain Brook, Alabama
8-83 to 5-89	Athletic Boosters Club	Member	Mountain Brook Jr. High Mountain Brook, Alabama
9-77 to 12-82	Birmingham Youth Hockey Association	Board of Directors Team coach	Birmingham, Alabama
1978 to 1979	Birmingham Amateur Hockey Association	Board of Directors Player	Birmingham, Alabama

1978-80	Amateur Hockey Association of the United States	Member (referee)	Colorado Springs, Colorado
Unknown	Downtown YMCA	Member	Birmingham, Alabama
Unknown	Shades Valley YMCA	Member	Birmingham, Alabama
	Traveler's Aid Society	Board of Directors President (1980)	Birmingham, Alabama
1976-78	Big Brothers of Greater Birmingham	Member	Birmingham, Alabama
1976 to 1980	Birmingham Bulls Boosters Club	Member Board of Directors	Birmingham, Alabama
1975 to 1980	Birmingham Monday Morning Quarterback Club	Member	Birmingham, Alabama
1977-79	The Face Off Club	Member	Birmingham, Alabama
1980 to 1982	The Downtown Club	Member	Birmingham, Alabama
1967 to 1970	The Club, Inc	Member	Birmingham, Alabama
1969 to 1972	The DeSoto Country Club	Member	Fort Payne, Alabama
1970 to 1974	Aircraft Owners and Pilots Association	Member	Bethesda, Maryland
1969 to present	Cumberland Alumni Association	Member	Birmingham, Alabama
1969 to 11-74	Dekalb County Arts Council	Member President (1973)	Fort Payne, Alabama
1971 to 1972	Sequoyah Players (little theater)	President	Fort Payne, Alabama
1969 to 1974	Landmarks of Dekalb County (historical preservation group)	Member	Fort Payne, Alabama
1969-70	Dekalb County March of Dimes	1969 campaign chairman	Fort Payne, Alabama
1969-74	Fort Payne Chamber of Commerce	Member	Fort Payne, Alabama
1962	University of Alabama Young Republican Club	Member	Tuscaloosa, Alabama
1963	Tuscaloosa County Republican Committee	Member	Tuscaloosa, Alabama
2-65 to 1967	Jefferson County Young Republican Club	Member	Birmingham, Alabama
2-67 to 8-69	Greater Birmingham Young Republican Club	Member	Birmingham, Alabama

1962 to 8-69	Young Republican Federation of Alabama	Member Executive Secretary (1967)	
1968	Abraham Lincoln Republican Club	Honorary Member	Birmingham, Alabama
1970 to 1974	Dekalb County Republican Committee	Member Vice-chairman (1971)	Fort Payne, Alabama
1970 to 10-74	Alabama Republican Executive Committee	Member By-laws Committee	Birmingham, Alabama
1965 to 1968	Birmingham Jaycees	Member	Birmingham, Alabama
1988 to present	Alabama Preservation Society	Member	Montgomery, Alabama
1975 to present	National Association of United States Magistrates	Member	C/o Hon. John Paul Godich Room 232, U. S. Courthouse

11. **Court Admission: List all courts in which you have been admitted to practice, with dates of admission and lapses if any such memberships lapsed. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.**

All the courts of the State of Alabama	September 12, 1969
The United States District Court for the Northern District of Alabama	February 19, 1970
United States Supreme Court	June 4, 1973

12. **Published Writings: List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited. Please supply one copy of all published material not readily available to the Committee. Also, please supply a copy of all speeches by you on issues involving constitutional law or legal policy. If there were press reports about the speech, and they are readily available to you, please supply them.**

I am attaching a survey of habeas corpus cases from the Eleventh Circuit and the United States Supreme Court dated August, 1988, which I edited for use by United States magistrates of the Eleventh Circuit in their consideration of habeas corpus matters. A second edition which will include cases from those courts since July 1, 1988, is in preparation as this is written. It is due to be delivered on August 9, 1989.

Except for two speeches to clubs on history matters, my public speaking during the past fifteen years has been limited to participation as a panelist on various CLE seminars sponsored by local bar associations. I have done a number of those. To my knowledge none have ever been reported in the press and I have always spoken from informal notes.

13. **Health: What is the present state of your health? List the date of your last physical examination.**

My health is excellent. I had a physical examination in January, 1989. My doctor is Pink L. Folmar, Jr., 801 Princeton Ave. S.W., Birmingham, Alabama 35211. His telephone number is (205) 780-7053.

14. **Judicial Office: State (chronologically) any judicial offices you have held, whether such position was elected or appointed, and a description of the jurisdiction of each such court.**

From October 14, 1974 until the present, I have served as a United States Magistrate in the United States District Court for the Northern District of Alabama. My jurisdiction is that established by 28 U.S.C. § 636, 18 U.S.C. § 3401, and the local rules of this court, a copy of which is attached hereto. My duties have included:

Criminal proceedings:

1. General supervision of the criminal calendar.

2. Hearing and deciding procedural and discovery motions.

3. Issuance of subpoenas, writs of habeas corpus ad testificandum or ad prosequendum, or other orders necessary to obtain the presence of parties, witnesses or evidence needed for court proceedings.

4. Conducting pretrial conferences and related proceedings.

5. Conducting initial appearances, arraignments, and acceptance of not guilty pleas.

6. Reviewing, conducting evidentiary hearings, considering, and making recommendations to the district court on motions to dismiss or quash indictments, motions to suppress evidence and applications to revoke probation.

7. Conducting trials, jury and non-jury, in misdemeanor criminal actions.

Civil Proceedings:

1. Hearing and determining pretrial procedural and discovery motions.

2. Issuance of subpoenas, writs of habeas corpus ad testificandum or ad prosequendum, or other orders necessary to obtain the presence of parties, witnesses or evidence needed for court proceedings.

3. Conducting preliminary and final pretrial conferences, status calls and settlement conferences, and the preparation of pretrial orders following the conclusion of final pretrial conferences.

4. Reviewing, considering and making recommendations to the district court on motions for injunctive relief (temporary restraining orders and preliminary injunctions), motions to dismiss, motions for judgment on the pleadings or for summary judgment, petitions for writs of habeas corpus by state and federal prisoners, complaints by prisoners for deprivation of civil rights, and reviewing administrative proceedings including decisions regarding benefits under the Social Security Act, Black Lung benefit laws, etc.

5. Conducting evidentiary hearings on prisoner civil rights actions and making recommendations for final dispositions of such claims.

6. Conducting evidentiary hearings on employment discrimination cases and receivership matters and making recommendations to the district judge for final dispositions.

7. Conducting evidentiary hearings and making recommendations to the district judge in a long-standing school desegregation case to move the school system toward unitary status.

Administrative duties:

Since February, 1987, administrative duties assigned to the most senior United States Magistrate in this district.

15. **Citations: If you are or have been a judge, provide: (1) citations for the ten most significant opinions you have written; (2) a short summary of and citations for all appellate opinions where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings; and (3) citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, please provide copies of the opinions.**

My orders and the opinions supporting them generally are appealable to a district judge sitting on the United States District Court for the Northern District of Alabama. I recall only one case in which a judge of the court published an opinion in which he reviewed one which I had written. That case is listed below. I have also included copies of opinions in several significant matters with which I have dealt. Where they have been available I have included copies of the opinions of the district court and of the court of appeals.

a. *United States of America v. Michael Irvin Canon*, Cr. 75-H-423-S. A copy of my opinion is attached. Judge James H. Hancock's opinion, reported at 404 F.Supp. 841, and the opinion of the 5th Circuit, reported at 554 F.2d 190, are also attached.

b. *GMC Broadcasting Incorporated v. Cooper Radio, Inc., et al.*, CV-85-P-0380. My opinion is attached.

c. *Hollie Cotton and Young Herrod v. Unites States Pipe & Foundry Company, a corporation, et al.*, CV-71-P-1181. This was an employment discrimination case. Following the affirmance by the court of appeals of Judge Sam C. Pointer's decree on class action claims, 599 F.2d 1326, he referred all individual claims for back pay to me to conduct hearings and make recommendations. Between the fall of 1980 and the summer of 1983, I conducted numerous evidentiary hearings and entered approximately 160 reports and recommendations on ~~393 separate back pay~~ claims. Judge Pointer accepted my recommendations on all but two claims.

There was an appeal to the Eleventh Circuit and that court appointed me as a special master to aid it in determining the identity of the appellants. I conducted proceedings and filed a report. This court was affirmed as to two appellants and the appeals of the remaining appellants were dismissed.

I have attached a copy of the decision of the Fifth Circuit on the original appeal, 559 F.2d 1326, several copies of typical reports filed by me, Judge Pointer's order entered after my recommendations were filed, the report which I filed in my role as a master for the Eleventh Circuit, and a copy of the decision of that court on the last appeal, 856 F.2d 158.

d. *Danny Ray Mylar, et al. v. Robert G. Britton*, CA-79-A-1420-S. This was a petition for the writ of habeas corpus by a state prison inmate who had been convicted of first degree murder and sentenced to life imprisonment. I have attached two reports and recommendations which I wrote, the opinion of Judge Clarence W. Allgood in which he declined to accept my recommendation, and the opinion of the Eleventh Circuit, 671 F.2d. 1299, in which it reversed the district court.

e. *United States of America v. Doris Webb*, CR-83-AR-122-M. This was a criminal case in which the defendant was charged in a multi-count indictment with conspiracy, mail fraud, and obstruction of justice. Attached is my recommendation on her motion to dismiss the indictment.

f. *United States of America v. Bernie Burnett Brown and Robert Ray Talley*, CR-82-C-0046-W. This was an indictment in which two persons were charged with extortion by threatening to poison food in super markets. The matter was before me on motion of one defendant to suppress statements given to agents of the F.B.I. Attached is my report and recommendation. Judge U. W. Clemon accepted my recommendation, the defendants were convicted, and the Eleventh Circuit affirmed. This was apparently an unpublished opinion.

g. *Larry Tucker, et al., v. George Phyfer, et al.*, CV-81-HM-5313-NW. This was a case in which the plaintiff sought class certification for a class of juveniles confined at the Lauderdale County, Alabama jail. The motion for class certification was referred to me for hearing and recommendation. I have attached a copy of my report and recommendation and a copy of the opinion of the Eleventh Circuit which affirmed the district court's denial of class certification, 819 F.2d 1030.

h. *United States of America v. Spiver Whitney Gordon*, CR-85-PT-200-W. In this and three companion cases persons associated with a predominantly black political group in Greene County, Alabama were charged in multi-count indictments with mail fraud and voter fraud. All pretrial matters were assigned to me for dispositions or recommendations, as appropriate. Among the many motions was one charging that the defendants had been discriminatorily and invidiously selected for prosecution. I found that they had not established a sufficient basis to require the government to provide discovery on the claim. The district judge agreed and Mr. Gordon was subsequently convicted. I have attached a copy of my report and recommendation and a copy of the opinion of the Eleventh Circuit in which the order of the district court was vacated and the cause remanded, 817 F.2d 1538.

i. *Stanley Earl Wilson v. C. E. Jones, et al.*, CV-87-1905-S. This was a petition for the writ of habeas corpus by a state prisoner who had been convicted on charges of first degree rape, first degree sodomy, and first degree kidnapping and had been sentenced to a total of 218 years imprisonment. The primary issue in the petition concerned a claim that the prosecution had used peremptory challenges to remove black persons from the jury venire because of their race. I conducted an evidentiary hearing and recommended that the petition be granted. Judge Clarence W. Allgood has not yet ruled on the respondents' objections to my recommendation. I have attached a copy of my opinion.

j. *Doris Elaine Brown, et al., v. The Board of Education of the City of Bessemer, et al.*, CV-65-HM-0366-S. I have attached a copy of my report and recommendation, a copy of Judge E. B. Haltom's opinion in which he declined to accept the recommendation, and a copy of the opinion of the Eleventh Circuit in which Judge Haltam was affirmed, 808 F.2d 1445.

k. I have handled many habeas corpus petitions from state inmates. Attached are four opinions in such cases which have been adopted by the Eleventh Circuit Court of Appeals.

l. *Leslie Ray Cox, et al. v. USX Corporation, et al.*, CV-88-G-2069-S. This is a civil action in which I have been assigned to supervise all pretrial discovery. I have attached a copy of a recent opinion and protective order which I entered in the case.

16. Public Office: **State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.**

I have never held public office other than the one I presently hold. I was the Republican candidate for the United States House of Representatives in the Fourth Congressional District of Alabama in 1972. I opposed the incumbent, Tom Bevill, and was defeated by a substantial margin.

17. Legal Career:

a. **Describe chronologically your law practice and experience after graduation from law school including:**

1. **whether you served as a clerk to a judge, and if so, the name of the judge, the court, and the dates of the period you were a clerk;**

I did not serve as a clerk to any judge but, instead, entered the private practice of law immediately after my admission to the bar.

2. **whether you practiced alone, and if so, the addresses and dates;**

I practiced in a two-person firm and then as a sole practitioner.

3. **the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been connected, and the nature of your connection with each;**

French & Nelson
Attorneys at Law
308 Alabama Avenue S. W.
Fort Payne, Alabama, 35967
September, 1969 until December, 1973
Partner

Edwin L. Nelson
Attorney at Law
116 1st Street S. W.
Fort Payne, Alabama 35967
January, 1974 until October 13, 1974
Sole practitioner

b. 1. **What has been the general character of your law practice, dividing it into periods with dates if its character has changed over the years?**

Upon my graduation from law school in August, 1969, I entered the private practice of law as a partner in a two person firm in Fort Payne, Alabama. The firm of French & Nelson had a general practice centered primarily in the state courts of Dekalb, Cherokee, and Jackson counties. Our practice included a substantial amount of criminal defense work. Most of that was in state court but, during that time, I tried two significant criminal cases in the federal courts. Our civil practice consisted of litigation in the following areas: commercial law, domestic relations, personal injury claims, and employment compensation claims. I also had a substantial real estate practice.

I ended my association with French & Nelson at the end of 1973 and was a sole practitioner in Fort Payne, Alabama until my appointment as United States Magistrate on October 14, 1974. The nature of my practice was the same as it had been while I was associated with Mr. French.

2. **Describe your typical former clients, and mention the areas, if any, in which you have specialized.**

Most of my clients were individuals and small businessmen and women including farmers and merchants. We represented a small bank for several years and did collection work for a large farm supply company. We also represented several small municipalities. For several years I regularly closed real estate loans for a local agent.

c. 1. **Did you appear in court frequently, occasionally, or not at all? If the frequency of your appearances in court varied, describe each such variance, giving dates.**

I appeared in court on a regular basis.

2. **What percentage of these appearances was in:**

(a)	federal courts;	10%
(b)	state courts of record;	80%
(c)	other courts.	10%

3. **What percentage of your litigation was:**

(a)	civil;	80%
(b)	criminal.	20%

4. **State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.**

I estimate that I tried 35 cases in five years. I estimate that in one-half of those I was sole counsel.

5. **What percentage of these trials was:**

(a)	jury;	33%
(b)	non-jury.	67%

18. **Litigation. Describe the ten most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:**

(a) the date of representation;
(b) the name of the court and the name of the judge or judges before whom the case was litigated; and
(c) The individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

I was in the private practice of law for five years. During that time, I practiced either in a two-person firm or as a sole practitioner. I have served as a United States Magistrate for almost fifteen years. Many years ago, thinking I had no further need of them, I disposed of the old case records from my law practice. The Clerk of this Court has transferred old case files to the archives in Atlanta. Thus, I have not had access to records of cases I handled in private practice. I have obtained the docket sheet of a case I tried in the Eastern District of Tennessee. From memory I have identified three cases which may be significant only because they stand out in my memory. They are:

1. *Wayne Jackson, Fred Hale, J. E. Hammonds, and National Truck Service v. White Motor Company and Freight liner Corporation*, case number 70-189, 70-190, and 70-191. United States District Court for the Northern District of Alabama. These were three claims for personal injuries and property damages arising out of a one vehicle accident which occurred on Interstate Highway 10 in western New Mexico in the spring of 1969. While I was still a senior in law school the two drivers and the owner of the involved vehicle retained Mr. French to bring actions against the manufacturers of the diesel tractor/trailer rig. When I joined him in the practice of law I was given the case and asked to prepare it for trial.

I investigated the facts, identified the correct parties, researched the applicable law, drafted the complaint, and filed suit. Thereafter, I conducted all trial preparations to include discovery, consultation with experts, and travel to Texas and New Mexico to take depositions for use at trial. The case was tried before the Honorable Sam C. Pointer, United States District Judge, in Gadsden, Alabama during the latter part of January, 1971. After a four-day trial the jury returned three verdicts in favor of the plaintiffs which totaled approximately $198,000.00.

The defendants in that case were represented by Clarence Simmons, Jr., Simmons, Ford and Brunson, Attorneys, 1411 Rainbow Drive, Gadsden, Alabama 35201, telephone 205-546-9205.

The case was significant because it was successfully tried before the Alabama Supreme Court established the Alabama Extended Manufacturer's Liability Doctrine which eased substantially the burden on plaintiffs seeking to impose liability against manufacturers of defective products. At the time it was tried, the combined verdict was reported to have been the largest verdict in a personal injury action in Etowah County, Alabama to that date.

2. *United States of America v. Demetre, et al.* Eight defendants were charged in a twenty-four count indictment with devising a scheme or artifice to defraud by use of the United States mails. Specifically, they were accused of setting up a wholesale business in Chattanooga, Tennessee and using fraudulent credit references to obtain goods and materials on credit with the intent to defraud the sellers of those goods. I was originally retained to represent two of the eight defendants but was appointed to represent the same defendants on the first day of trial.

The case was tried in the United States District Court for the Eastern District of Tennessee at Chattanooga before the Honorable Frank W. Wilson, United States District Judge, beginning on Monday, February 1, 1971, and continued until jury verdicts were rendered on Thursday, February, 18, 1971. All defendants were found guilty on all charges.

I was completely responsible for the defense of my clients. I argued, cross-examined, objected, and presented evidence on their behalves. I was appointed and represented them on appeal. The decision on appeal is reported as *United States v. Demetre*, 461 F.2d 971 (6th Cir. 1972). The government was represented by Assistant United States Attorney W. Lloyd Stanley. Co-defendants were represented by Wayne Peters of Chattanooga, Tennessee, Harold Duncan of Chattanooga, Tennessee, and Glen McColpin, and Clarence Walker. I do not know the present addresses of any of those attorneys.

3. *United States of America v. Gus Prosch*. This was a criminal case tried in the United States District Court for the Northern District of Alabama before the Honorable Clarence W. Allgood, United States District Judge. It was tried in the latter part of 1971 (I believe it was in December). Dr. Gus Prosch, a physician in Birmingham, was indicted on firearms and explosives charges after a trailer which he owned was opened and found to be filled with automatic weapons, explosives, bazookas, and other unlawful firearms. Mr. French was retained to represent him and I was asked to assist. In fact, I participated in most of the pretrial preparation, including the factual investigation. The research was probably 75% my work and I drafted most of the motions. At the trial which I recall as lasting four days, I participated on a more or less equal basis with Mr. French.

The government was represented in that case by Assistant United States Attorneys Melton L. Alexander and Al Bowen. Their present addresses are:

Mr. Melton L. Alexander
325 Park Place Tower
Birmingham, Alabama 35203
205-328-7400

Mr. Albert C. Bowen, Jr.
2019 3rd Ave. North
Birmingham, Alabama 35203
205-328-7651

The case was memorable only because of the public interest which attended it. The news media devoted much attention to the presence of a privately held "arsenal" in the community and there was much speculation concerning its intended purpose.

The defendant was convicted and there was an appeal. That appeal was handled by another lawyer. I do not remember who that was and I can find no reference to the case in the reported decisions. I assume the Fifth Circuit opinion was not reported.

19. Legal Activities: **Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe the nature of your participation in this question, please omit any information protected by the attorney-client privilege (unless the privilege has been waived.)**

Not applicable.

II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. **List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients, or customers. Please describe the arrangement you have made to be compensated in the future for any financial or business interest.**

I do not anticipate any receipts from deferred income arrangements, stocks, options, uncompleted contracts or other future benefits from previous business relationships, professional services, firm memberships, former employers, clients, or customers. I do have certain retirement benefits from my service as a United States Magistrate. I am not, at this time, aware of what options will be available to me with regard to those retirement benefits if I am confirmed as a United States District Judge.

2. **Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated.**

Title 28, USC, § 455 and Canon 3 C of the Code of Judicial Conduct for United States Judges each provide that a United States Judge shall disqualify himself in any case in which the judge's "impartiality might reasonably be questioned". The statute and the canon each set out in very similar terms specific circumstances which require disqualification. During my service in my present office I have consistently made a good faith effort to avoid conflicts of interests according to the spirit and the letter of the canon and the statute. If I am confirmed, I will continue to do that. Specifically, I have limited my associations with persons, groups, organizations, associations, or other legal entities which might give rise to a conflict of interest or the appearance of a conflict of interest and have limited my own investments in order to minimize the potential for conflicts of interest.

I have also informed myself concerning the associations of my spouse and dependent children and have urged them to avoid associations which have the potential for conflicts of interest. In 1986 when my wife's mother, Dorothy L. Mayes, moved into our home and Mrs. Nelson then took an active part in the day-to-day management of her mother's financial affairs, I asked for and obtained a list of her investments and added her holdings to my recusal list. Mrs. Mayes died on June 13, 1988 and Mrs. Nelson became the beneficial owner of one-third of Mrs. Mayes' entire estate and of one-third of the remaining half of the estate of her father, Harold B. Mayes, who died on July 17, 1974. In the two estates were a number of small lots of stocks. Mrs. Nelson has since disposed of most of those small lots.

Where circumstances have existed which might have given rise to a potential conflict or the appearance of a conflict, I have made it a consistent policy to fully inform counsel and the parties of all the circumstances and to react appropriately.

I know of no categories of cases which may present conflicts of interest problems for me.

3. **Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.**

I have no plans, commitments, or agreements to pursue outside employment during my service with the government.

4. **List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding $500 or more (If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here.)**

I have attached to these answers a complete listing of all sources of income received by Mrs. Nelson, our children, and myself during calendar years 1986, 1987, 1988, and 1989.

5. **Please complete the attached financial net worth statement in detail. (Add schedules as called for).**

The requested financial net worth statement is attached.

6. Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

a. In 1962, while I was a student at the University of Alabama, I was an unpaid volunteer in the campaign of the Republican candidate for the United States Senate. The candidate was Jim Martin. I had no title. My role was limited to telephone and door-to-door canvassing and to handing out campaign materials to the public.

b. From January, 1964 until December, 1964, I served as a paid campaign organizer for the Jefferson County, Alabama Republican Executive Committee. My title was Field Representative and my duties included recruiting, organizing, training, and directing precinct workers for the presidential, local, and congressional elections of that year.

c. In July, 1964, I served as an assistant doorkeeper at the Republican National Convention.

d. In 1966 and 1968, I was a campaign aide to U. S. Representative John H. Buchanan in his campaigns for re-election. My duties included recruiting, organizing, training, and directing campaign workers.

e. In 1972, I was the Republican candidate for the United States House of Representatives in the Fourth Congressional District of Alabama.

III. GENERAL (PUBLIC)

1. **An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.**

I practiced law in a small town in northern Alabama from September, 1969 until October, 1974. As noted elsewhere in these answers, I disposed of case records from my law practice many years ago. The local bar there had no organized means for the assignment of *pro bono* legal matters to its members. Most of our members, including myself, were aware of and responded to our ethical obligations to provide services to those unable to pay. My memory is that I regularly performed services for the poor for little or no fee. I also regularly accepted appointments from the local courts to represent indigent defendants in criminal matters. This was at a time when Alabama law provided for very little compensation for such appointed counsel.

I recall two specific cases. They are:

a. An elderly widow (I don't remember her name), whose only income was from social security, consulted me concerning some logging trucks which had been using a path across her land to access a public road. I agreed to help her and filed suit to enjoin the loggers' use of the road. The case involved a counterclaim that the road in question was one of long standing and that the public had acquired a right-of-way by virtue of such long use. We eventually tried the case and won. I estimated at the time that I had more than 100 hours involved. After the case was concluded, the lady absolutely refused to accept my "charity" and insisted that I give her a bill. She paid me a total of $50.00 at the rate of $5.00 per month.

b. I was once appointed to "assist" a young lawyer who had been appointed to represent a man charged with first degree murder. My appointment came approximately three weeks before the scheduled trial. In the intervening time I spent approximately 75% of my working hours preparing to defend a murder case in which the prosecution had two eye witnesses who were prepared to testify that the defendant shot the victim in cold blood while he begged for his life. The case was tried to a jury over a period of several days (four if memory serves) and resulted in a guilty verdict of manslaughter in the first degree.

At the time of that trial, the State of Alabama provided a payment of $100.00 for counsel appointed to defend a first degree murder case. No funds were provided for defense services. From my $100.00 fee, I paid $50.00 to the local mental health center to have an intelligence test administered to the defendant and paid another $35.00 to have the mental health worker testify that the defendant had limited intelligence.

2. **The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion. Do you currently belong, or have you belonged, to any organization which discriminates -- through either formal membership requirements or the practical implementation of membership policies? If so, list, with dates of membership. What you have done to try to change these policies?**

I do not currently belong to any organization that discriminates invidiously on the basis of race, sex, or religion. In the past I have belonged to the following organizations.

a. From 1975 until 1980, I was a member of the Birmingham Monday Morning Quarterback Club. That is a men's luncheon club that meets during the football season to listen to speakers who are prominent in football circles. The club also has an annual fund raising undertaking for its charity projects.

b. From approximately 1980 until 1982, I was a member of The Downtown Club, a social club in Birmingham, Alabama. At the time I was a member I know the club had no membership restrictions based on sex and I do not believe it had restrictions based on religion. I do not know about race. I have been informed that it has no such restrictions at the present time.

c. While I was in law school, Mrs. Nelson and I were junior members of The Club, Inc., a social club in Birmingham, Alabama. The club had no restrictions based upon sex. I do not know about religion. Local press reports in the past two years have stated that the club has admitted its first black members.

d. From 1969 until 1972, Mrs. Nelson and I were members of the DeSoto Country Club in Fort Payne, Alabama. I am infomred by the president of the club that it does not now and has never had any written restrictions on membership based upon race, color, creed, sex, religion, or national origin. To my knowledge, the club had no black members at the time we were there.

3. **Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, did it recommend your nomination? Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and interviews in which you participated).**

There is, to my knowledge, no judicial selection committee in this district to recommend candidates for nomination to the federal judiciary. When Judge J. Foy Guin announced that he intended to assume senior status, I made some discreet contacts with persons whose opinions I felt would be important to the new administration. I also contacted most of the district judges on this court to determine their reactions to my possible candidacy. I was encouraged by the responses which I received and asked several of my friends to recommend my nomination. I was successful in gaining the support of a number of persons including Congressmen William L. Dickinson and Sonny Callahan.

I have been informed that Congressman Dickinson conducted his own investigation to determine that I had the qualifications necessary to the office of United States District Judge and, recommended my nomination. I was interviewed by officials at the Department of Justice in April, 1989. I am told that at least one other person was also interviewed. In June, 1989, I was informed that, subject to the FBI background check and other investigations, I would be recommended to President Bush for nomination to the office of United States District Judge.

4. **Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as asking how you would rule on such case, issue, or question? If so, please explain fully.**

No one involved in the judicial selection process has questioned or discussed with me any case or legal issue which could reasonably be construed as asking me how I would rule on that case or legal issue.

5. **Please discuss your views on the following criticism involving "judicial activism."**

The role of the Federal judiciary within the Federal government, and within society generally, has become the subject of increasing controversy in recent years. It has become the target of both popular and academic criticism that alleges that the judicial branch has usurped many of the prerogatives of other branches and levels of government.

Some of the characteristics of this "judicial activism" have been said to include:

a. **A tendency by the judiciary toward problem-solution rather than grievance-resolution;**

b. **A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals;**

c. **A tendency by the judiciary to impose broad, affirmative duties upon governments and society;**

d. **A tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness; and**

e. **A tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.**

The issue of "judicial activism" implicates concerns regarding the proper role of the federal judiciary in a free society. That role is limited by the "cases" and "controversies" language of Article 3, Section 2 of the United States Constitution. Those provisions, operating together, have the effect of limiting the role of the courts, first, to questions which are viewed as being capable of judicial resolution and which are presented in an adversarial context, and second, by retarding judicial intrusion into areas of responsibility which have been committed by the Constitution to the Executive or Legislative branches.

The courts ought not to extend themselves beyond the reach of the parties and the issues properly before them. They should not select cases or parties to use as vehicles for making policy or solving societal problems, but rather, should accept and deal only with those cases and those parties properly before them. It is the duty of each court to make a diligent and good faith effort to discern the law applicable to the parties and the case presented and to apply that law to those parties and to that case without regard to any collateral consequences which may result from the court's decision. Court decisions often have far-reaching effects, but such effects should be the result of the facts and the law of the case and not the result of over-reaching on the part of the judge.

A federal judge should bear in mind that the ultimate repository of authority in the United States is the people. Those same people have entrusted limited power to a federal judiciary staffed by judges who, because they are given life tenure and an assured compensation, are virtually unaccountable to the people. In that sense, the federal judiciary is the least democratic of the three branches of government. A stable society needs an independent and fearless judiciary, but judges have no charter under our Constitution to advance any social or political agenda and, if they did, are generally ill equipped to handle such matters. For a court to extend its reach beyond that established for it under the Constitution would be contrary to the fundamental democratic character of our nation. Thus, a proper respect for the Constitutional role of the courts requires a court to extend its power only so far as may be necessary and appropriate to resolve the particular case before it.

Edwin L. Nelson - Master list of securities (1986-1989)

Name	Shares	Current Price	Current Value	Status	Acquire Date	Dispose Date	Gain/Loss	Income 1986	1987	1988	1989
Alabama Housing Authority (S) (Tax free)	166.66	$101.00	$16,832.66	Hold	6/13/88			$0.00	$0.00	$645.83	$645.83
Alabama Poll. Ctrl. Bd. (S) (Tax free)	16.67	$100.00	$1,666.60	Matured	6/13/88	10/1/88		$0.00	$0.00	$45.83	$0.00
Alabama Power Co. 4.2% Preferred (S)	3.33	$40.00	$129.41	Sold	6/13/88	3/7/89	($13.92)	$0.00	$0.00	$0.00	$3.50
Alabama Pub. School Bonds (S) (Tax free)	133.33	$99.50	$13,266.34	Hold	6/13/88			$0.00	$0.00	$426.66	$426.67
Alliance Dividend Shares (S)	539.00	$2.91	$1,568.49	Hold	6/13/88			$0.00	$0.00	$0.00	$21.57
Alliance Dividend Shares (S)	539.00		$1,449.91	Sold	6/13/88	3/7/89	($135.66)	$0.00	$0.00	$0.00	$0.00
Allied Signal (S)	2.00		$62.60	Sold	6/13/88	3/7/89	($7.03)	$0.00	$0.00	$0.00	$0.90
Amoco (S)	6.66		$299.70	Church	6/13/88	5/30/89		$0.00	$0.00	$0.00	$0.00
Amoco (S)	60.00	$47.00	$2,820.00	Hold	6/13/88			$0.00	$0.00	$0.00	$123.50
Amoco (S)	66.66		$2,663.49	Sold	6/13/88	3/23/89	$18.09	$0.00	$0.00	$0.00	$0.00
AmSouth Bancorporation (S)	957.33	$28.00	$26,805.24	Hold	6/13/88			$0.00	$0.00	$0.00	$947.76
Benguet Consolidated (S)	8.33		$37.49	Church	6/13/88	5/30/89		$0.00	$0.00	$0.00	$0.00
Benguet Consolidated (S)	8.33		$27.64	Sold	6/13/88	4/11/89	($9.35)	$0.00	$0.00	$0.00	$0.00
Big B Drugs	200.00			Sold	1/18/83	5/11/87	$671.00	$0.00	$0.00	$0.00	$0.00
Capital Realty Invest. IV (Ltd. Part.)	5.00	$1,000.00	$5,000.00	Hold	5/21/84			($2,230.00)	($1,565.00)	($765.00)	
CD Grt. Wes. Bk. (Merrill Lynch) (DC)	5000.00	$1.00	$5,000.00	Hold	4/21/84			$0.00	$0.00	$0.00	$0.00
CD Grt. Wes. Bk. (Merrill Lynch) (DC)	4000.00	$1.00	$4,000.00	Hold	4/21/89			$0.00	$0.00	$0.00	$0.00
CD Untd. Svgs. American (IRA) (S)				Sold	3/30/84	9/15/86	$397.00	$0.00	$0.00	$0.00	$0.00
CD Untd. Svgs. Assn. Houston (IRA)				Sold	1/16/85	9/15/86	$145.00	$0.00	$0.00	$0.00	$0.00
Courtland Ind. Dev. Bonds (S) (Tax free)	66.67	$89.00	$5,933.33	Hold	6/13/88			$0.00	$0.00	$191.66	$191.67
CIR (Trea. Strp - Merrill Lynch) (IRA)	38500.00	$0.37	$14,290.00	Hold	1/21/88			$0.00	$0.00	$0.00	$0.00
Cyprus Minerals (S)	3.33		$130.83	Church	6/13/88	5/30/89		$0.00	$0.00	$0.00	$0.00
Cyprus Minerals (S)	3.33		$128.03	Sold	6/13/88	3/14/89	$29.59	$0.00	$0.00	$0.00	$1.33
Dravo Corporation (S)	44.00	$18.50	$738.31	Sold	6/13/88	3/07/89	$92.06	$0.00	$0.00	$0.00	$0.00
Dravo Corporation (S)	44.00	$16.75	$737.00	Hold	6/13/88			$0.00	$0.00	$0.00	$0.00
Dresser Industries (S)	30.00	$47.38	$1,421.25	Hold	6/13/88			$0.00	$0.00	$0.00	$19.93
Dresser Industries (S)	30.66		$1,028.82	Sold	6/13/88	3/07/89	($5.96)	$0.00	$0.00	$0.00	$0.00
Dresser Industries (S)	0.66		$25[illegible]	Church	6/13/88	5/30/89		$0.00	$0.00	$0.00	$0.00
Duff & Phelps Sel. Util. Fd. (IRA)	200.00			Sold	1/21/87	4/11/89	($528.00)	$0.00	$96.00	$144.00	$42.00
Duff & Phelps Sel. Util. Fd. (IRA) (S)	25.00			Sold	1/21/87	4/11/89	($93.00)	$0.00	$13.76	$18.00	$5.25
Enterprise, Ala. Bond (S) (Tax free)	1.67	$1,000.00	$1,666.66	Matured	6/13/88	10/1/88		$0.00	$0.00	$56.25	$0.00
First Alabama Bancshares (S)	1021.33	$18.75	$19,149.94	Hold	6/13/88			$0.00	$0.00	$0.00	$633.23
Genuine Parts Co. (S)	200.00	$42.25	$8,450.00	Hold	6/29/89			$0.00	$0.00	$0.00	$0.00
Golden Enterprises, Inc. (DC)	32.00	$9.88	$316.00	Hold	9/15/83			$6.00	$6.00	$10.00	$23.68
Guntersville Ind. Dev. (S) (Tax free)	166.67	$90.00	$15,000.00	Hold	6/13/88			$0.00	$0.00	$516.66	$516.67
IBM (S)	75.00	$117.13	$8,784.38	Hold	6/29/89			$0.00	$0.00	$0.00	$0.00
Jacksonville Water Bonds (S) (Tax free)	183.33	$98.00	$17,966.66	Hold	6/13/88			$0.00	$0.00	$660.00	$1,320.00
Kiowa Development Co. (S)	11.00		$22.00	Sold	6/13/88	3/20/89	$22.00	$0.00	$0.00	$0.00	$0.00

Edwin L. Nelson - Master list of securities (1986-1989)

Lawrence Cty. Bd. Educ. (S) (Tax free)	133.33	$100.00	$13,333.33	Matured	6/13/88	7/1/89		$0.00	$0.00	$260.00	$520.00
Lehman Investors Fund (S)	42.33	$18.38	$778.03	Hold	6/13/88			$0.00	$0.00	$0.00	$33.23
Lehman Investors Fund (S)	41.66		$707.59	Sold	6/13/88	5/16/89	$41.86	$0.00	$0.00	$0.00	$0.00
Massachusetts Investors Growth Stock (S)	233.34	$10.70	$2,496.74	Hold	6/13/88			$0.00	$0.00	$0.00	$9.80
Massachusetts Investors Growth Stock (S)	658.00		$5,777.24	Sold	6/13/88	3/7/89	($92.12)	$0.00	$0.00	$0.00	$0.00
Massachusetts Investors Trust (S)	133.33	$14.48	$1,930.66	Hold	6/13/88			$0.00	$0.00	$0.00	$25.33
Massachusetts Investors Trust (S)	133.00		$1,590.68	Sold	6/13/88	3/7/89	($6.65)	$0.00	$0.00	$0.00	$0.00
Mead Corporation (S)	1113.00	$45.88	$51,058.88	Hold	6/13/88			$0.00	$0.00	$0.00	$1,037.55
Mead Corporation (S)	1770.33		$70,686.25	Sold	6/13/88	3/03/89	$5,294.68	$0.00	$0.00	$0.00	$0.00
Merrill Lynch Basic Value Fund (IRA)	195.00	$20.87	$4,069.00	Hold	4/11/89			$0.00	$0.00	$0.00	$0.00
Merrill Lynch Basic Value Fund (DC)	135.00	$20.87	$2,817.45	Hold	4/20/89			$0.00	$0.00	$0.00	$0.00
Merrill Lynch Basic Value Fund (DC)	287.00	$20.87	$5,989.69	Hold	4/20/89			$0.00	$0.00	$0.00	$0.00
Merrill Lynch Capital Fund (IRA)	113.00			Sold	4/14/83	1/27/88	$1,062.00	$0.00	$0.00	$0.00	$0.00
Merrill Lynch Fund for Tomorrow (IRA)	562.00			Sold	3/22/84	1/27/88	$2,445.00	$0.00	$0.00	$0.00	$0.00
Merrill Lynch Muni. Bond Fd. (Tax free)	769.00			Sold	10/12/84	12/5/88	$140.00	$736.34	$587.77	$519.00	$0.00
Merrill Lynch Muni. Bond Fd. (Tax free)	484.00			Sold	10/24/85	3/15/86	$622.00	$0.00	$0.00	$0.00	$0.00
Merrill Lynch Ret. Ben. Prog. (IRA)	229.00			Sold	1/15/86	1/27/88	$264.00	$0.00	$0.00	$0.00	$0.00
Merrill Lynch Ret. Ben. Prog. (IRA) (S)	28.34			Sold	1/15/86	4/11/89	$70.00	$0.00	$0.00	$0.00	$0.00
Merrill Lynch Ret. Inc. Fund (IRA)	383.35			Sold	9/15/86	4/11/89	$384.00	$0.00	$0.00	$0.00	$71.96
Merrill Lynch Ret. Inc. Fund (IRA) (S)	155.99			Sold	9/15/86	4/11/89	$155.00	$0.00	$0.00	$0.00	$29.29
Merrill Lynch Ret. Inc. Fund (DC)	1279.00			Sold	9/15/86	4/20/89	($1,103.00)	$248.00	$1,058.00	$1,093.00	$311.28
Merrill Lynch Ret. Inc. Fund (DC)	1235.00			Sold	9/15/86	4/20/89	($596.00)	$238.00	$1,016.00	$1,105.00	$300.57
Merrill Lynch Strategic Dividend Fund	129.00	$12.45	$1,606.05	Hold	4/11/89			$0.00	$0.00	$0.00	$0.30
Mo., Ks. & Texas RR. (S)	4.00	$1,000.00	$4,000.00	Hold	6/13/88			$0.00	$0.00	$0.00	$80.00
Monroe Cty. Hospital Bd. (S) (Tax free)	83.33	$100.00	$8,333.33	Matured	6/13/88	2/9/89		$0.00	$0.00	$312.50	$312.50
MRI Bus. Props. (Limited partnership)	5.00	$1,000.00	$5,000.00	Hold	2/15/86					($38.00)	$75.00
No. Ala. Environ. PCR (S) (Tax free)	33.33	$100.00	$3,333.30	Matured	6/13/88	10/1/88		$0.00	$0.00	$110.00	$0.00
Occidental Petroleum (S)	10.00	$29.38	$293.75	Hold	6/13/88			$0.00	$0.00	$0.00	$31.25
Occidental Petroleum (S)	10.00		$261.38	Sold	6/13/88	3/14/89	($3.62)	$0.00	$0.00	$0.00	$0.00
Scana (S)	225.67	$34.50	$7,785.50	Hold	6/13/88			$0.00	$0.00	$0.00	$412.98
Sonat (S)	1.67		$60.00	Church	6/13/88	5/30/89		$0.00	$0.00	$0.00	$0.00
Sonat (S)	711.00	$41.88	$29,773.13	Hold	6/13/88			$0.00	$0.00	$0.00	$712.57
Southtrust Corporation	3289.66	$25.25	$83,063.92	Hold	6/13/88			$0.00	$0.00	$0.00	$2,279.25
Tenneco (S)	27.00		$1,260.66	Sold	6/13/88	3/7/89	($11.72)	$0.00	$0.00	$0.00	$34.20
Tenneco (S)	9.00		$488.25	Church	6/13/88	5/30/89		$0.00	$0.00	$0.00	$0.00
Texaco, Inc (S)	10.00		$502.72	Sold	6/13/88	3/7/89	($3.53)	$0.00	$0.00	$0.00	$17.50
Texaco, Inc (S)	6.66		$346.32	Church	6/13/88	5/30/89		$0.00	$0.00	$0.00	$0.00
The Southern Company (common stock)	92.56	$27.50	$2,545.50	Hold	1/18/83			$145.00	$163.00	$179.00	$95.95
Torchmark Corporation (S)	0.66		$8.67	Church	6/13/88	5/30/89		$0.00	$0.00	$0.00	$0.00
Torchmark Corporation (S)	1048.66	$44.50	$46,665.37	Hold	6/13/88			$0.00	$0.00	$0.00	$944.20

Edwin L. Nelson - Master list of securities (1986-1989)

Torchmark Corporation	100.00			Sold	5/11/87	5/23/88	$164.00	$0.00	$50.00	$50.00	$0.00
Tuscaloosa Water Bonds (S) (Tax free)	66.67	$97.00	$6,466.63	Hold	6/13/88			$0.00	$0.00	$220.00	$400.00
U. S. Trea. Strp. (Merrill Lynch) (IRA)	20.00	$29.40	$588.00	Hold	8/17/88			$0.00	$0.00	$0.00	$0.00
U. S. Trea. Strp. (S) (IRA)	60.00	$33.97	$2,038.00	Hold	4/11/89			$0.00	$0.00	$0.00	$0.00
United Investors Management Co. (S)	41.67		$535.87	Sold	6/13/88	3/7/89	$184.28	$0.00	$0.00	$0.00	$0.00
United Investors Management Co. (S)	42.00	$18.50	$777.00	Hold	6/13/88			$0.00	$0.00	$0.00	$25.10
United Security Holding Co. (S)	1.67		$0.15	Sold	6/13/88	3/21/89	$0.00	$0.00	$0.00	$0.00	$0.00
United States Steel (S)	5.00		$150.45	Sold	6/13/88	3/7/89	($7.98)	$0.00	$0.00	$0.00	$1.75
Vulcan Materials Company	80.00	$46.50	$3,720.00	Hold	5/23/86			$0.00	$0.00	$59.00	$44.80
West Jeff, Ala Bonds (S) (Tax free)	50.00	$99.00	$4,950.00	Hold	6/13/88			$0.00	$0.00	$184.38	$184.37
Wheelabrator Group, Inc.	0.66		$1.67	Sold	6/13/88	4/19/89	($6.25)	$0.00	$0.00	$0.00	$5.17
Zero Coupon Bond (Merrill Lynch) (DC)				Sold	2/15/85	9/15/86	$1,312.00	$805.00	$0.00	$0.00	$0.00
Zero Coupon Bond (Merrill Lynch) (DC)				Sold	2/15/85	9/15/86	$1,440.00	$803.00	$0.00	$0.00	$0.00

Note: This document represents a compilation of securities held by me and members of my family at any time during 1986 through 1989. The present value of those securities is shown where we still hold them. Income is shown for each of the relevant years. One exception is where securities were held in tax deferred IRAs. In those cases I have shown all income as gains or losses in the years when the securities were sold. Another exception is for securities other than tax free bonds which were acquired by Mrs. Nelson upon the death of her mother on 6-13-88. For 1988, income from those is reported seperately as income from the estates of Harold B. and Dorothy L. Mayes. For tax free bonds acquired from those estates, income is reported here for both 1988 and 1989. Securities marked with (S) are owned by Mrs. Nelson. Those marked with (DC) are held by my children. Unmarked lots are held by me. Lots marked under the column with the word "Church" were donated on the dates shown.

Edwin L. Nelson - Misc. income sources 1986 through 1989

Source	1986	1987	1988	1989
Gifts from Dorothy L. Mayes	$12,379.73	$12,329.95	$10,238.64	
Secor Bank. Int. on checking acct. (DC)		$11.88	$30.12	$30.00
Int. on M-L Cash Mgmt. Acct. (DC)	$19.00			
Secor Bank. Int. on checking acct. (DC)		$11.85	$40.39	$40.00
Int. on M-L Cash Mgmt. Acct. (DC)	$20.00			
AmSouth Bank. Int. on checking acct. (S)			$58.00	$166.18
Int. on M-L Cash Mgmt. Acct.	$251.00	$112.00	$109.00	
Kemper Cash Equiv. Acct. Int. (S)				$2,164.00
Est. H. B. Mayes. Int. on checking acct. Closed 3-22-89)				$292.14
Est. H. B. Mayes. Int. on checking acct.				$31.33
Est. H. B. Mayes. Kemper cash equiv. acct.				$0.50
Est. H. B. Mayes. Kemper tax free cash equiv. acct.				$301.46
Est. of D. L. Mayes. Money mkt. acct. Closed 1-13-89				$6.44
Est. D. L. Mayes. Int. on checking acct.				$120.77
Est. D. L. Mayes. Kemper cash equiv. acct.				$891.33
Est. H. B. Mayes			$2,971.00	
Est. of D. L. Mayes			$2,567.00	
Admin. Off. of U. S. Courts (salary)	$68,400.00	$71,824.94	$74,139.92	$41,169.96
Est. of D. L. Mayes. Federal tax refund.				$1,164.33
Est of D. L. Mayes. Alabama tax refund				$609.00
Estate of Leola Holcomb (S)				$1,000.00

Note: Leola Holcomb was a dear friend of Mrs. Nelson's parents for more than sixty years. When she died in the spring of 1989, she left $1,000 to each of Mr. and Mrs. Mayes' three children.

CONFIDENTIAL FINANCIAL STATEMENT
Edwin L. Nelson
September 12, 1989

Assets	Amount
Cash on hand and in banks	$55,040.12
U. S. Government securities (Schedule A)	$16,916.20
Listed securities (Schedule B)	$315,173.83
Unlisted securities (Schedule C)	$104,396.65
Accounts and notes receivable	$0.00
Due from relatives and friends	$0.00
Due from others	$0.00
Doubtful	$0.00
Real estate owned (Schedule D)	$333,333.00
Real estate mortgages receivable	$0.00
Autos and other personal property (Schedule E)	$119,400.00
Cash value of life insurance (Schedule F)	$12,187.00
Other assets (Schedule G)	$0.00
Total assets	$956,446.80

Liabilities	Amount
Notes payable to banks - secured (Schedule H)	$13,365.00
Notes payable to banks - unsecured (Schedule I)	$936.00
Notes payable to relatives (Schedule J)	$0.00
Notes payable to others (Schedule K)	$0.00
Accounts and bills due (Schedule L)	$0.00
Unpaid income tax (Schedule M)	$0.00
Other unpaid tax and interest (Schedule N)	$0.00
Real estate mortgages payable (Schedule O)	$112,010.72
Chattel mortages and other liens payable (Schedule P)	$0.00
Other debts (Schedule Q)	$10,535.81
Total liabilities	$136,847.53
Net worth	$819,599.27
Total liabilities and net worth	$956,446.80

Contingent liabilities	Amount
As endorser, comaker or guarantor	$0.00
On leases or contracts	$12,080.00
Legal Claims	$0.00
Provision for Federal Income Tax	$5,000.00
Other special debt	

General information	
Are any assets pledged?	No
Are you a defendant in any suits or legal actions?	No
Have you ever taken bankruptcy?	No

Edwin L. Nelson
Cash on hand and in banks

Ed Nelson's checking account	$388.00
Linda Nelson's personal interest bearing checking account (S)	$3,906.86
Linda Nelson's non-interest checking account (S)	$533.31
Cash Equivalent Fund (S) (Government Securities Portfolio)	$26,256.61
Cash Equivalent Fund (S) (Government Securities Portfolio, DLM estate)	$14,551.96
Estate of DLM checking (S)	$6,649.73
Mayes Special - HBM (S)	$1,697.65
Pat Nelson's savings account (DC)	$694.00
Pat Nelson's checking account (DC)	$362.00
Total cash on hand and in banks	$55,040.12

Edwin L. Nelson - Government securities

Schedule A.

Security		Shares	Per share Value	Value
U. S. Trea. Strp. (S) (IRA)		600.00	$3.40	$2,038.20
U. S. Trea. Strp. (Merrill Lynch)	(IRA)	200.00	$2.94	$588.00
CTR (Trea. Strp - Merrill Lynch)	(IRA)	38500.00	$0.37	$14,290.00
Total value of government securities				$16,916.20

Edwin L. Nelson - listed securites

Schedule B

Name	Shares	Current Price	Current Value
Alliance Dividend Shares (S)	539.00	$2.91	$1,568.49
Amoco (S)	60.00	$47.00	$2,820.00
AmSouth Bancorporation (S)	957.33	$28.00	$26,805.24
Dravo Corporation (S)	44.00	$18.50	$814.00
Dresser Industries (S)	30.00	$47.38	$1,421.25
First Alabama Bancshares (S)	1021.33	$18.75	$19,149.94
Genuine Parts Co. (S)	200.00	$42.25	$8,450.00
Golden Enterprises, Inc. (DC)	32.00	$9.88	$316.00
IBM (S)	75.00	$117.13	$8,784.38
Lehman Investors Fund (S)	42.33	$18.38	$778.03
Massachusetts Investors Growth Stock (S)	233.34	$10.70	$2,496.74
Massachusetts Investors Trust (S)	133.33	$14.48	$1,930.66
Mead Corporation (S)	1113.00	$45.88	$51,058.88
Merrill Lynch Basic Value Fund (IRA)	192.00	$20.87	$4,007.04
Merrill Lynch Basic Value Fund (DC)	132.00	$20.87	$2,754.84
Merrill Lynch Basic Value Fund (DC)	280.00	$20.87	$5,843.60
Merrill Lynch Strategic Dividend Fund	128.00	$12.45	$1,593.60
Occidental Petroleum (S)	10.00	$29.38	$293.75
Scana (S)	225.67	$34.50	$7,785.50
Sonat (S)	711.00	$41.88	$29,773.13
Southtrust Corporation	3289.66	$25.25	$83,063.92
The Southern Company (common stock)	91.00	$27.50	$2,502.50
Torchmark Corporation (S)	1048.66	$44.50	$46,665.37
United Investors Management Co. (S)	42.00	$18.50	$777.00
Vulcan Materials Company	80.00	$46.50	$3,720.00
Total value of listed securities			$315,173.83

Edwin L. Nelson - unlisted securities

Schedule C

Name	Units	Current Price	Current Value
Alabama Housing Authority (S) (Tax free)	166.67	$101.00	$16,833.33
Alabama Pub. School Bonds (S) (Tax free)	133.33	$99.50	$13,266.66
Capital Realty Invest. IV (Ltd. Part.)	5.00	$1,000.00	$5,000.00
CD Grt. Wes. Bk. (DC) (Merrill Lynch)	5000.00	$1.00	$5,000.00
CD Grt. Wes. Bk. (DC) (Merrill Lynch)	4000.00	$1.00	$4,000.00
Courtland Ind. Dev. Bonds (S) (Tax free)	66.67	$89.00	$5,933.33
Guntersville Ind. Dev. (S) (Tax free)	166.67	$90.00	$14,999.99
Jacksonville Water Bonds (S) (Tax free)	193.33	$98.00	$18,946.34
Mo., Ks. & Texas RR. (S)	4.00	$1,000.00	$4,000.00
MRI Bus. Props. (Limited partnership)	5.00	$1,000.00	$5,000.00
Tuscaloosa Water Bonds (S) (Tax free)	66.67	$97.00	$6,466.99
West Jeff, Ala Bonds (S) (Tax free)	50.00	$99.00	$4,950.00
Total of unlisted securities			$104,396.65

Schedule D
Edwin L. Nelson - Real property owned

Residence: 3728 River Bend Lane Birmingham, Alabama 35223 This house is owned jointly with Mrs. Nelson with right of survivorship.	$200,000.00
Vacation home: 20405 Front Beach Road Panama City Beach, Florida 32413 This figure represents an undivided one-third interest in this house which Mrs. Nelson and I own jointly with her two sisters and their husbands.	$133,333.00
Total real estate	$333,333.00

Schedule E
Edwin L. Nelson - Personal property owned

Item	Value
1989 Mazda Van	$18,000.00
1988 Nissan 200 SX automobile	$8,000.00
Household furnishings	$50,000.00
Silver	$10,000.00
Jewelry	$10,000.00
Photography equipment	$1,000.00
Pat's Computer and printer	$5,000.00
Allison's computer and printer	$1,200.00
Ed's computer and printer	$1,200.00
Clothing	$5,000.00
Personal library	$10,000.00
Total personal property	$119,400.00

Schedule F
Edwin L. Nelson - Cash value of life insurance

Name of policy	Cash Value
Edwin L. Nelson (Monarch Life Ins. Co.)	$9,687.00
Patrick L. Nelson (Integon Life Ins. Co.)	$1,500.00
Susan Allison Nelson (Integon Life Ins. Co.)	$1,000.00
Total cash value of life insurance	$12,187.00

Schedule G
Edwin L. Nelson - Other assets

Name	Due Date	Amount
Total other assets		$0.00

Schedule H
Edwin L. Nelson - Secured notes payable to banks

Name	Due Date	Amount
AmSouth Bank (1989 Mazda Van)		$13,365.00
Total secured notes owed to banks		$13,365.00

Schedule I
Edwin L. Nelson - Unsecured notes payable to banks

Name	D	Amount
AmSouth Bank (line of credit)		$936.00
Total secured notes owed to banks		$936.00

Schedule J
Edwin L. Nelson - Notes payable to relatives

Name	Due Date	Amount
Total notes owed to relatives		$0.00

Schedule K
Edwin L. Nelson - Notes payable to others

Name	Due Date	Amount
Total notes payable to others		$0.00

Schedule L
Edwin L. Nelson - Accounts and bills due

Name	Due Date	Amount
Total accounts and bills due		$0.00

Schedule M
Edwin L. Nelson - Unpaid income tax

Name	Due Date	Amount
Total unpaid income tax		$0.00

Schedule N
Edwin L. Nelson - Other unpaid tax and interest

Name	Due Date	Amount
Total other unpaid tax and interest		$0.00

Schedule O
Edwin L. Nelson - Real property mortgages owed

Mortgagee	Balance
Real Estate Financing, Inc.	$63,372.00
Merrill Lynch Equity	$48,638.72
Total of real estate mortgages	$112,010.72

Schedule P
Edwin L. Nelson - Chattel mortgages

Mortgagee	Balance
Total of chattel mortgages	$0.00

Schedule Q
Edwin L. Nelson
Other debts owed

Payee	Due	Balance
American Express	10/1/89	$523.89
Attorney fees (Estate of Dorothy Mayes)		$9,000.00
The Small Computer Bookclub	10/1/89	$51.24
The Legal Classics Library	10/1/89	$45.68
Visa (Southtrust Bank)	10/10/89	$915.00

Total of other debts owed	$10,535.81

New Magis. Rules

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF ALABAMA

FILED
DEC 15 1983
UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ALABAMA
JAMES E. VANDEGRIFT, CLERK

IN THE MATTER OF:)
)
GENERAL REFERENCE OF)
CERTAIN MATTERS TO)
UNITED STATES MAGISTRATES)

ORDER

In accordance with the Rules Governing Jurisdiction and Authority of United States Magistrates promulgated by this court, it is hereby ORDERED that the following matters are referred to the full-time United States Magistrates without the necessity of a specific order of reference:

1. All those matters under the heading "Criminal Proceedings" enumerated in Rule 1(a)(1) of the Rules Governing Jurisdiction and Authority of the United States Magistrates.

2. All those matters enumerated in Rule 2(a)(1)(A) of the Rules Governing Jurisdiction and Authority of the United States Magistrates.

3. All those matters under the heading "Prisoner Petitions" enumerated in Rule 2(a)(4) of the Rules Governing Jurisdiction and Authority of the United States Magistrates.

This order replaces and supercedes that prior order of general reference dated January 31, 1977.

DONE this 15th day of December, 1983.

Sam C Pointer Jr
CHIEF JUDGE

U.W. Clemon
JUDGE

James H. Hancock
JUDGE

William M Acker Jr.
JUDGE

JUDGE

Seybourn H. Lynne
SENIOR JUDGE

JUDGE

H.H. Grooms
SENIOR JUDGE

JUDGE

C.W. Allgood
SENIOR JUDGE

RULES GOVERNING JURISDICTION AND AUTHORITY OF UNITED STATES MAGISTRATES IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ALABAMA

RULE 1

NON-DISPOSITIVE MATTERS [28 U.S.C. § 636(b)(1)(A)]

(a) Reference of Pretrial Matters. Any judge of this court may designate a magistrate of this court to hear and determine any pretrial matter pending before the court, except the following motions: to dismiss or quash an indictment or information made by the defendant; to suppress evidence in a criminal case; for injunctive relief; for judgment on the pleadings; for summary judgment; to dismiss or permit maintenance of a class action; to dismiss for failure to state a claim upon which relief can be granted; and to involuntarily dismiss an action.

Pretrial matters which may be referred to a magistrate under this rule shall include but shall not be limited to:

(1) Criminal Proceedings

(A) General supervision of the criminal calendar, including calendar calls and motions to expedite or postpone the trial of cases.

(B) Hearing and deciding procedural and discovery motions.

(C) Hearing and deciding motions by the government to dismiss an indictment or information without prejudice to further proceedings and any other motion or pretrial matter which is not specifically enumerated as an exception in 28 U.S.C. § 636(b)(1)(A).

(D) Issuance of subpoenas, writs of habeas corpus ad testificandum or ad prosequendum or other orders necessary to obtain the presence of parties or witnesses or evidence needed for court proceedings.

(E) Conduct of pretrial conferences, omnibus hearings, and related proceedings.

(F) Conduct of initial appearances, arraignments, acceptance of not guilty pleas, and the ordering of a presentence report on a defendant who signifies the desire to plead guilty.

(2) Civil Proceedings

(A) General supervision of the civil calendar, including the handling of calendar calls and motions to expedite or postpone the trial of cases.

(B) Hearing and determining pretrial procedural and discovery motions and other motions or pretrial matters which are not specifically enumerated as an exception in 28 U.S.C. §636(b)(1)(A).

(C) Issuance of subpoenas, writs of habeas corpus ad testificandum or ad prosequendum or other orders necessary to obtain the presence of parties or witnesses or evidence needed for court proceedings.

(D) Issuance of scheduling orders as provided by Rule 16(b), Federal Rules of Civil Procedure.

(E) Conduct of preliminary and final pretrial conferences, status calls and settlement conferences, and the preparation of a pretrial order following the conclusion of the final pretrial conference.

(b) Order of Reference. Every reference of a matter to a magistrate under Rules 1 and 2 hereof shall be by order signed by a district judge or shall be pursuant to a general order of reference with regard to a particular class or category of matters or cases. The clerk shall serve notice of each reference made under this rule, other than by general order, upon all parties to the action.

(c) Finality. All decisions of the magistrate under this rule shall be final subject only to a right of review by the district judge to whom the pertinent case has been assigned.

(d) Procedure for Review. An aggrieved party may obtain review of the decision of the magistrate under this rule by filing with the court, within 10 days of the date such decision is entered, an appropriate motion to review which shall specify in detail the manner in which the magistrate is claimed to have erred. Any party to the action may respond to the motion to review within 7 days of the date it is filed. Such motions and responses thereto shall be served in accordance with the provisions of Rule 5 of the Federal Rules of Civil Procedure or Rule 49 of the Federal Rules of Criminal Procedure, as may be appropriate. For good cause shown, the magistrate or a district judge may expand such time period or, with actual notice to the parties, reduce such time period.

(e) Scope of Review. The judge to whom the pertinent case is assigned may vacate, amend, or remand to the magistrate with instructions, any decision of the magistrate where it is shown that said decision is clearly erroneous or contrary to law. Nothing herein shall be construed to in any way detract from the inherent power of a district judge sua sponte to vacate, amend or reconsider any decision of a magistrate in the interests of justice.

RULE 2

DISPOSITIVE MATTERS AND PRISONER CASES [28 U.S.C. § 636(b)(1)(B)]

(a) Reference of Dispositive Matters. Any judge of this court may designate a magistrate to review and consider, to conduct hearings, including evidentiary hearings, and to submit to the judge proposed findings of fact and recommendations for the disposition by the judge of any of the following matters:

(1) Criminal Proceedings

(A) Motions to dismiss or quash an indictment or information made by the defendant.

(B) Motions to suppress evidence.

(C) Applications to revoke probation (including the conduct of the "final" probation revocation hearing).

(2) Civil Proceedings

(A) Motions for injunctive relief (temporary restraining orders and preliminary injunctions).

(B) Motions to dismiss for failure to state a claim upon which relief may be granted.

(C) Motions to involuntarily dismiss an action (and the review of default judgments).

(D) Motions to dismiss or to permit the maintenance of a class action.

(E) Motions for judgment on the pleadings or for summary judgment.

(3) Judicial Review of Administrative Proceedings

(A) Decisions regarding benefits under the Social Security Act, the "Black Lung" benefits laws, and other similar statutes.

(B) The administrative award or denial of licenses or similar privileges.

(C) The decisions by the Civil Service Commission or other appropriate agency in federal employee matters.

(4) Prisoner Petitions

(A) Habeas corpus petitions filed by state prisoners under 28 U.S.C. § 2254 or by federal prisoners under 28 U.S.C. § 2241. In connection with the magistrate's handling thereof, the magistrate is expressly authorized to issue orders to show cause and other necessary orders or writs to obtain a complete record.

(B) Motions filed by federal prisoners for the correction or reduction of sentence under Rule 35 of the Federal Rules of Criminal Procedure or to vacate sentence under 28 U.S.C. § 2255.

(C) Original complaints by prisoners for the deprivation of constitutional rights. In connection with the magistrate's handling thereof, the magistrate is expressly authorized to take on-site depositions; gather evidence; conduct pretrial conferences; serve as a mediator at the holding facility; and conduct periodic reviews to insure compliance with previous orders of the court regarding conditions of confinement.

(D) Prisoner correspondence.

(b) Order of Reference. References made under this rule shall be in accord with the procedure established in Rule 1(b) of these rules.

(c) Procedure on Reference. A magistrate to whom a reference is made pursuant to this rule shall have the authority to do all things necessary to fulfill his duties under such reference in the manner and to the same extent as if the matter were before a district judge. The magistrate shall, within a reasonable time after completing such proceedings as may be necessary to the reference, file with the clerk of the court his proposed findings of fact and recommended disposition of the matter together with a proposed order for the court.

The clerk shall serve a copy of the magistrate's proposed findings, recommendation and proposed order on all parties by mailing a copy to each party or his counsel at his address of record. The parties may file specific objections to the magistrate's report within 10 days after being served with a copy; said objections shall be in writing and shall be served on all other parties to the action in accord with Rule 5 of the Federal Rules of Civil Procedure or Rule 49 of the Federal Rules of Criminal Procedure, as may be appropriate. A party may respond to another party's objections within 10 days after being served with a copy thereof.

(d) Scope of Review. Final adjudication of matters referred under this rule shall rest with the judge assigned to hear the case. Such judge shall make a *de novo* determination on the basis of the record developed before the magistrate, or after additional evidence, of any portion of the magistrate's proposed findings of fact, recommended disposition or proposed order to which specific written objection has been made in accordance with this rule, and such judge is not bound to adopt the findings and conclusions of the magistrate. The judge may accept, modify or reject the magistrate's findings or recommended decision, receive further evidence or recommit the matter to the magistrate with instructions.

RULE 3

SPECIAL MASTER REFERENCES AND TRIALS BY CONSENT [28 U.S.C. § 636(b)(2)]

Any judge of this court may by special order of reference designate a magistrate to serve as a special master pursuant to the applicable provisions of law and the Federal Rules of Civil Procedure. Matters which may be referred to a magistrate under this rule shall include but shall not be limited to:

(a) Service as a special master in accordance with the provisions of Rule 53 of the Federal Rules of Civil Procedure, except that with the consent of the parties, the provisions of Rule 53(b) shall not apply.

(b) Conduct of evidentiary hearings and preparation of findings in employment discrimination cases as a master under Title VII of the Civil Rights Act of 1964, as amended, whenever a judge has not scheduled a case for trial within 120 days after issue has been joined. [42 U.S.C. § 2000e-5(f)]

(c) Conduct of hearings and resolution of specific issues in patent, antitrust and other complex cases where there are a great many issues, claims and documents, or in multiple disaster and class action cases where there are numerous claimants and diverse claims.

(d) Service as a commissioner to determine compensation and assess damages in land condemnation cases under Rule 71A(h) of the Federal Rules of Civil Procedure.

(e) Service as a master for the assessment of damages, such as in admiralty cases.

(f) Presiding over trials in civil cases by consent of the parties.

RULE 4

MISCELLANEOUS ADDITIONAL DUTIES [28 U.S.C. § 636(b)(3)]

Any judge of this court may assign to a magistrate such additional duties as are not inconsistent with the Constitution and laws of the United States. A formal order of reference shall not be necessary to implement an assignment of any of the duties hereafter enumerated. Such additional duties may include but shall not be limited to:

(a) Receipt of grand jury returns, in accordance with Rule 6(f) of the Federal Rules of Criminal Procedure.

(b) Exoneration or forfeiture of bonds.

(c) Service as a member of the district's Speedy Trial Act Planning Group, including service as the reporter. [18 U.S.C. § 3168]

(d) Review of petitions in civil commitment proceedings under Title III of the Narcotic Addict Rehabilitation Act.

(e) Disposition of civil violations under the Federal Boat Safety Act. [46 U.S.C. § 1484(d)]

(f) Conduct of voir dire and selection of juries in trials to be presided over by district judges.

(g) Acceptance of petit jury verdicts in civil cases.

(h) Supervision of proceedings on requests for letters rogatory in civil and criminal cases, provided that a special designation has been made by the district court as required under 28 U.S.C. § 1782(a).

(i) Examining judgment debtors. [Rule 69 of the Federal Rules of Civil Procedure]

(j) Review of default judgments and conduct of inquests on damages in cases involving default judgments.

(k) Coordination of the court's efforts in such fields as the promulgation of local rules and procedures and the administration of the forfeiture of collateral system.

RULE 5

COMMISSIONER TYPE DUTIES [28 U.S.C. § 636(a)]

Each United States magistrate serving in this court shall have within the territorial jurisdiction prescribed by his appointment all powers and duties conferred or imposed upon United States magistrates by law or by the Rules of Criminal Procedure for the United States District Courts. Such duties shall include but shall not be limited to:

(a) The trial and sentencing of defendants charged with "misdemeanors" (upon the consent of the defendant), and the power to invoke the federal probation laws. [18 U.S.C. § 3401]

(b) Accepting complaints, finding probable cause and issuing appropriate arrest warrants or summonses for the named defendants. [Rule 4 of the Federal Rules of Criminal Procedure]

(c) Issuance of search warrants upon a determination that probable cause for the warrants exists. [Rule 41 of the Federal Rules of Criminal Procedure]

(d) Conduct of initial appearance proceedings for defendants, informing them of their rights, admitting them to bail and imposing conditions of release. [Rule 5 of the Federal Rules of Criminal Procedure and 18 U.S.C. § 3146]

(e) Appointment of attorneys for indigent defendants, together with the administration of the court's Criminal Justice Act plan, the maintenance of a register of eligible attorneys and the approval of attorneys' expense vouchers in appropriate cases. [18 U.S.C. § 3006(A)]

(f) Conduct of full preliminary examinations. [Rule 5.1 of the Federal Rules of Criminal Procedure and 18 U.S.C. § 3060]

(g) Conduct of removal hearings for defendants charged in other districts and issuance of warrants of removal. [Rule 40 of the Federal Rules of Criminal Procedure]

(h) Administering oaths and taking bail, acknowledgements, affidavits and depositions. [28 U.S.C. § 636(a)(2)]

(i) Setting bail for material witnesses. [18 U.S.C. § 3149]

(j) Upon special designation by the district court, the conduct of extradition proceedings. [18 U.S.C. § 3184]

(k) Holding to security of the peace and for good behavior. [18 U.S.C. §3043]

(l) Discharge of indigent prisoners or persons imprisoned for debt under process of execution issued by a federal court. [18 U.S.C. § 3569 and 28 U.S.C. § 2007]

(m) Issuance of an attachment or order to enforce obedience to an Internal Revenue Service summons to produce records or give testimony. [26 U.S.C. § 7604(b)]

(n) Issuance of administrative inspection warrants.

(o) Instituting proceedings against persons violating certain civil rights statutes. [42 U.S.C. § 1987]

(p) Settling or certifying the nonpayment of seamen's wages. [46 U.S.C. § 603]

(q) Enforcing awards of foreign consuls in differences between captains and crews of vessels of the consul's nation. [22 U.S.C. § 258(a)]

(r) Issuance of writs authorizing levy, entry, search and seizure by the Internal Revenue Service requested pursuant to 26 U.S.C. § 6331 upon a determination of probable cause.

RULE 6

APPEALS FROM JUDGMENTS OF MAGISTRATES IN MISDEMEANOR CASES [18 U.S.C. § 3402]

In cases of conviction by a magistrate, an appeal of right shall lie from the judgment of the magistrate to a judge of this court. The following procedures shall apply to such appeals:

(a) An appeal shall be taken within 10 days after entry of judgment by filing a notice of appeal with the clerk of court and by serving a copy upon the United States Attorney. Upon receipt of the notice of appeal, the clerk shall assign the appeal to a judge and assign a case number if a number has not been previously assigned.

(b) A filing fee of $5.00 shall be required to be paid at the time the notice of appeal is filed. If a defendant desires to proceed as an indigent, he must file a motion for leave to appeal in forma pauperis and a declaration of indigency with the notice of appeal.

(c) The defendant is not entitled to a trial de novo by the district judge. The scope of appeal shall be the same as on an appeal from a judgment of a district court to a court of appeals.

(d) Upon completion of the record (as defined in Rule 7(c), Rules of Procedure for the Trial of Misdemeanors before United States Magistrates), the clerk shall promptly forward the record, together with a certification as to its completeness, to the district judge. A copy of the record shall be furnished to the defendant only if requested and only after arrangements for payment have been made.

(e) The judge may affirm, reverse, or modify the magistrate's judgment, or he may remand with instructions for further proceedings. The judge shall accept the magistrate's findings of fact unless clearly erroneous, and he shall give due regard to the opportunity of the magistrate to evaluate the credibility of witnesses.

AMERICAN BAR ASSOCIATION
Standing Committee on
Federal Judiciary
1800 M Street, NW
Washington, DC 20036
(202) 331-2210

CONFIDENTIAL

September 12, 1989

Hon. Joseph R. Biden, Jr.
Chairman, Committee on the Judiciary
United States Senate
SD 224
Washington, D.C. 20510-0802

RE: HON. EDWIN LEVON NELSON
United States District Court for the
Northern District of Alabama

Dear Senator Biden:

Thank you for affording this Committee an opportunity to express an opinion pertaining to the nomination of Judge Edwin Levon Nelson for appointment as Judge of the United States District Court for the Northern District of Alabama.

Our Committee is unanimously of the opinion that Judge Nelson is Qualified for this appointment.

A copy of this letter has been sent to Judge Nelson for his information.

Sincerely,

Ralph Lancaster

Ralph I. Lancaster, Jr.
Chairperson

RIL/sm

cc All Committee Members
Hon. Edwin Levon Nelson
Barbara Drake, Esq.

G. THOMAS VAN BEBBER

Birth:	October 21, 1931	St. Joseph, Missouri
Legal Residence:	Kansas	
Marital Status:	Married	Alleen S. Castellani One stepchild
Education:	1949 - 1953	University of Kansas A.B. degree
	1953 - 1955	University of Kansas Law School LL.B. degree
Bar:	1955	Kansas
Experience:	1955 - 1959	Reeder & Van Bebber Partner
	1959 - 1961	Assistant U. S. Attorney District of Kansas
	1961 - 1982	Sole Practitioner Troy, Kansas
	1961 - 1975	City Attorney City of Troy
	1963 - 1969	County Attorney Doniphan County, Kansas
	1973 - 1975	Representative Kansas State Legislature
	1975 - 1979	Kansas State Corporation Commission Member & Chairman
	1982 - present	United States Magistrate District of Kansas
Office:	475 U.S. Courthouse 444 S. E. Quincy Topeka, Kansas 66683 913 295-2730	
Home:	311 S.W. Yorkshire Road Topeka, Kansas 66606	

To be United States District Judge for the District of Kansas

QUESTIONNAIRE FOR JUDICIAL NOMINEES

I. BIOGRAPHICAL INFORMATION (PUBLIC)

1. Full name: George Thomas Van Bebber

2. Address:

Home:
311 S.W. Yorkshire Road
Topeka, Kansas 66606

Office:
475 U. S. Courthouse
444 S. E. Quincy
Topeka, Kansas 66683

3. Date and place of birth: October 21, 1931, St. Joseph, Missouri.

4. Marital status: Married. Spouse's full name is Alleen Sarah. Her maiden name was Diklich. She was previously married and her married name was Castellani. She continues to use the name Alleen S. Castellani professionally.

Her present employer is U.S. Department of Justice as an Assistant U.S. Attorney for the Western District of Missouri, Kansas City, Missouri. She is Chief of the Civil Division. Her business address is 811 Grand Avenue, Kansas City, Mo. 64106.

5. Education: University of Kansas. Entered the University of Kansas in September, 1949. Received Bachelor of Arts degree in June, 1953. Entered University of Kansas Law School in fall of 1952, and received L.L.B. degree in June, 1955.

6. Employment record:

Following graduation from law school at the University of Kansas I practiced as an associate and partner in the firm of Reeder & Van Bebber, Troy, Kansas 66087, from July, 1955, to February, 1959.

From February, 1959, to July, 1961, I served as an Assistant United States Attorney at Topeka, Kansas, and at Kansas City, Kansas. Service at Kansas City was from about May, 1960, to July, 1961. During that period I was in charge of the Kansas City office.

From July, 1961, to June, 1982, I was a sole practitioner with the address 111 South Main Street, Troy, Kansas 66087. I practiced alone.

While engaged in sole practice of law at Troy, Kansas, I also served as City Attorney for the City of Troy, Kansas, from about July, 1961, to April or May, 1975.

While I was a sole practitioner at Troy, Kansas, I served as County Attorney of Doniphan County, Kansas, from January, 1963, to January, 1969. The County Attorney was not an exclusive position and I maintained my private law practice in addition to service as County Attorney. As County Attorney I was the chief prosecutor of criminal cases in Doniphan County, Kansas, and also represented the county government in civil matters.

While maintaining my law practice at Troy, Kansas, I served in the Kansas State Legislature in the House of Representatives from January, 1973, to April, 1975, when I resigned to accept an appointment by the Governor as a member of the Kansas State Corporation Commission. The Kansas State Corporation Commission is the utility regulatory commission in the State of Kansas. In September, 1975, I was elected Chairman of the Commission and continued to serve as Chairman until the expiration of my term in March, 1979. While serving on the Corporation Commission I did not close my private law practice, but I was able to devote only limited time to it. After March, 1979, I devoted full time to my private law practice at Troy, Kansas, and continued to do so until my appointment as United States Magistrate effective June 14, 1982.

7. Military service: None.

8. Honors and awards: I was a member of the Order of the Coif at the University of Kansas Law School.

9. Bar associations:

American Bar Association;
Kansas Bar Association;
10th Circuit Judicial Conference;

Topeka Bar Association;
Northeast Kansas Bar Association;
Topeka Lawyers Club.

I have served on the Kansas Bar Journal Committee of the Kansas Bar Association.
I have served as a member of the Bench-Bar Committee of the United States District Court for the District of Kansas since 1986. I have served and continue to serve as the reporter for the Rules Revision Subcommittee of the Bench-Bar Committee of the United States District Court for the District of Kansas, and as such have been the principal revisor of the Local Rules of Practice of the United States District Court for the District of Kansas. I have lectured on federal practice and procedure in Continuing Legal Education seminars sponsored by the United States District Court for the District of Kansas and the Topeka, Kansas, Bar Association.

10. Other memberships:

Organizations active in lobbying before public bodies:

American Bar Association;
Kansas Bar Association;
National Council of United States Magistrates

Other organizations to which I belong:

Masonic Organizations as follows: Troy Lodge No. 55, A. F. & A. M., Troy, Kansas; Troy Chapter No. 16, Royal Arch Masons, Troy, Kansas; Washington Council No. 2, Atchison, Kansas; Washington Commandery No. 2, Atchison, Kansas; Abdallah Shrine Temple, Overland Park, Kansas; St. Augustine Conclave, Topeka, Kansas;

Others: Kansas State Historical Society, Topeka, Kansas; Acacia Fraternity, Lawrence, Kansas; Topeka Festival Singers, Topeka, Kansas.

11. Court Admission:

Kansas Supreme Court, June 29, 1955;

U. S. District Court, District of Kansas, June 29, 1955;

United States Court of Appeals for the Tenth Circuit, March 28, 1961;

Interstate Commerce Commission, about 1961 or 1962.

12. Published writings: None.

13. Health: The present state of my health is good. The date of my last physical examination was June 30, 1989.

14. Judicial Office: I presently hold the office of United States Magistrate, United States District Court, District of Kansas. I have held no other judicial offices. The jurisdiction of United States Magistrate is set out in 28 U.S.C. § 636.

15. Citations: Copies of ten opinions that I have written as U.S. Magistrate are attached to these answers. Constitutional questions have not been involved. I do not believe that my opinions have been reported.

16. Public Office:

Assistant United States Attorney. Appointed. January, 1959, to July, 1961.

County Attorney of Doniphan County, Kansas. Elected. January, 1963, to January, 1969.

Member, House of Representatives, Kansas State Legislature. Elected. January, 1973, to April, 1975.

Chairman, Kansas State Corporation Commission. Appointed. April, 1975, to March, 1979.

I was an unsuccessful candidate for County Attorney of Doniphan County, Kansas in 1956.

17. Legal Career:

a. Chronological description of law practice and experience after graduation from law school:

I have not served as a clerk to a judge.

Following graduation from law school at the University of Kansas I practiced as an associate and partner in the firm of Reeder & Van Bebber, Troy, Kansas 66087, from July, 1955, to February, 1959.

From February, 1959, to July, 1961, I served as an Assistant United States Attorney at Topeka, Kansas, and at Kansas City, Kansas. Service at Kansas City was from about May, 1960, to July, 1961. During that period I was in charge of the Kansas City office.

From July, 1961, to June, 1982, I was a sole practitioner with the address 111 South Main Street, Troy, Kansas 66087. I practiced alone.

While engaged in sole practice of law at Troy, Kansas, I also served as City Attorney for the City of Troy, Kansas, from about July, 1961, to April or May, 1975.

While I was a sole practitioner at Troy, Kansas, I served as County Attorney of Doniphan County, Kansas, from January, 1963, to January, 1969. The County Attorney was not an exclusive position and I maintained my private law practice in addition to service as County Attorney. As County Attorney I was the chief prosecutor of criminal cases in Doniphan County, Kansas, and also represented the county government in civil matters.

While maintaining my law practice at Troy, Kansas, I served in the Kansas State Legislature in the House of Representatives from January, 1973, to April, 1975, when I resigned to accept an appointment by the Governor as a member of the Kansas State Corporation Commission. The Kansas State Corporation Commission is the utility regulatory commission in the State of Kansas. In September, 1975, I was elected Chairman of the Commission and continued to serve as Chairman until the expiration of my term in March, 1979. While serving on the Corporation Commission I did not close my private law practice, but I was able to devote only limited time to it. After March, 1979, I devoted full time to my private law practice at Troy, Kansas, and continued to do so until my appointment as United States Magistrate effective June 14, 1982.

b. General character of law practice:

My practice was a general, diversified practice typical of a sole practitioner in a non-metropolitan area in Kansas. I engaged in considerable probate and estate planning work, as well as domestic relations and general civil trial work. I engaged in some criminal defense, and did some work under the Kansas Workers Compensation Act. I also represented clients in obtaining and operating motor carrier authority and performed services in public utility areas.

While I was an Assistant United States Attorney from 1959 to 1961, I engaged in substantial criminal prosecutions, did some Federal Tort Claim Act defense on behalf of the government and was involved in land condemnation and acquisition work.

While I was County Attorney of Doniphan County, Kansas, from 1963 to 1969, I was heavily engaged in criminal prosecutions. In Kansas, the County Attorney is the chief criminal prosecutor for each county in the state.

After my election to the Kansas State Legislature in 1972, I tried fewer cases than previously because I was not as available for litigation work as before. This continued through my service as a member of the Kansas Corporation Commission from 1975 to 1979, and generally after that and until my appointment as U. S. Magistrate in 1982 I was less heavily engaged in trial work. The emphasis of my law practice became more involved in real estate and probate matters, estate planning and administrative law matters than previously.

My typical former clients were banks, a savings and loan association, an electric cooperative, manufacturing firms, retail businesses, farmers and wage earners. I also represented some governmental bodies or agencies consisting of several small cities and an Indian housing authority. Many of my clients were retired persons.

c. 1. During most of my practice from 1955 to 1982, I appeared in court regularly. However, during the time that I served as Chairman of the Kansas

Corporation Commission from 1975 to 1979, my court appearances were much less frequent.

2. Percentage of appearances:

(a) Federal courts: 10%
(b) State courts of record: 90%
(c) Other courts: None.

3. Percentage of litigation was:

(a) Civil: 75%
(b) Criminal: 25%.

4. The number of cases in courts of record tried to verdict or judgment:

It is difficult to make an estimate to answer this question because I have not been in law practice for more than seven years and I do not have records available. My estimate is that I tried more than 400 cases to verdict and judgment, and in all but a few cases I was either sole counsel or chief counsel.

5. The percentage of these trials were:

(a) Jury: 15%
(b) Non-jury: 85%.

18. Litigation: The following is a list of the ten most significant litigated matters which I personally handled. I do not have the docket numbers of the cases available to me.

1. When I was an Assistant United States Attorney I handled the acquisition of a large rental housing project located at Ft. Leavenworth, Kansas, through eminent domain proceedings on behalf of the United States. This litigation involved more than 100 rental houses which had been constructed by a private developer on government land at Ft. Leavenworth. This case was tried to a Commission appointed in the United States District Court for the District of Kansas by the Honorable Delmas C. Hill, District Judge. The Commissioners were Edgar C. Bennett, Walter Urban and John Quinlan, all of whom are now deceased. The case involved substantial questions of valuation methods and capitalization rates. The case was tried in 1960. Co-counsel with me was Wilbur G. Leonard, United States

Attorney (Tel. 913-234-9016). The condemnee was represented by Lester Goodell of Topeka, Kansas, who is now deceased.

2. While I was an Assistant United States Attorney for the District of Kansas I represented the United States in condemnation proceedings to acquire the Blue River Sand and Gravel Company in Marshall County, Kansas. This condemnation proceeding was a part of the acquisition of the Tuttle Creek Reservoir by the U. S. Corps of Engineers. I represented the United States. Trial was held to a Commission appointed by Judge Delmas C. Hill, U. S. District Judge. The Commissioners were Edgar C. Bennett, Walter Urban and John Quinlan, all of whom are now deceased. Associated with me as co-counsel was Jerry W. Hannah, an Assistant U. S. Attorney. (Tel. 913-267-0202). Counsel for the condemnee was Robert Galloway of Marysville, Kansas, who is now deceased. This proceeding took place in 1960.

3. Elwood-Gladden Drainage District of Doniphan County, Kansas v. Ramsel, et al., appeal of Byron G. Hunter. This was a condemnation case in which I represented the landowner. It took place in 1969 in the District Court of Doniphan County, Kansas. Chester C. Ingels of Hiawatha, Kansas, was the presiding judge (Tel. 913-742-3522). I represented Byron G. Hunter who is now deceased. I was sole counsel for the condemnee. Counsel for the condemnor was Robert A. Reeder of Troy, Kansas (Tel. 913-985-3811). This case was tried to a jury. It involved a substantial amount of land with questions of severance damages and valuation. The trial resulted in an increased award for the landowner.

4. Elwood-Gladden Drainage District of Doniphan County, Kansas v. Ramsel, et al., appeal of Earnest E. Osburn from award of appraisers. This was a land condemnation case in the District Court of Doniphan County, Kansas, which took place in 1969. I represented the landowner, Earnest E. Osburn. The case was tried to a jury in the District court of Doniphan County, Kansas, Chester C. Ingels, District Judge, presiding. I was sole counsel for the landowner. Counsel for the condemnor was Robert A. Reeder of Troy, Kansas. This case involved substantial questions of valuation and severance damages. It resulted in an increased award for the landowner.

5. Adam Kleppe v. Webb Prawl, et al. This was a personal injury case tried to a jury in the District Court of Doniphan County, Kansas, in 1956. The presiding judge was Robert H. Kaul, now of Topeka, Kansas (Tel. 913-272-8522). I represented plaintiff as co-counsel with Robert A. Reeder of Troy, Kansas. The defendants were represented by James W. Lowry of Atchison, Kansas, now deceased. This case involved questions relating to assumption of risk and contributory negligence. Trial resulted in a plaintiff's verdict which was appealed to the Supreme Court of Kansas by the defendants. It is reported as Kleppe v. Prawl, 181 Kan. 590, 313 P.2d 227, 63 A.L.R.2d 175 (1957).

6. Donald D. Manville v. Borg-Warner Corp. This was an action for damages for invasion of the right to privacy brought in the United States District Court for the District of Kansas and tried in 1968 before Arthur J. Stanley, U. S. District Judge. I represented plaintiff and was co-counsel with James F. Duncan of Kansas City, Missouri (Tel. 816-842-3132). The defendants were represented by Kent E. Whittaker and William V. North (Tel. 913-451-3355), who now practice at Overland Park, Kansas. Trial resulted in a verdict for plaintiff. The District Judge granted judgment for defendant, n.o.v., and plaintiff appealed to the United States Court of Appeals for the Tenth Circuit where the District Court's judgment was affirmed. 418 F.2d 434. (10th Cir. 1969).

7. Robert Lee Martin v. Edna Weidman. This was an action to recover a real estate broker's commission tried in the District Court of Brown County, Kansas, in 1966, Chester C. Ingels, District Judge. The case was tried to a jury and resulted in a verdict for plaintiff. I represented plaintiff. The defendant property owner appealed to the Supreme Court of Kansas and the judgment of District Court was affirmed. Martin v. Weidman, 199 Kan. 716, 433 P.2d 459 (1967). I was sole counsel for plaintiff. Defendant was represented by Jack R. Euler, Troy, Kansas (Tel. 913-985-3561).

8. State of Kansas v. Ronald Lee Oliphant. This was a criminal case in which I represented the defendant, Ronald Lee Oliphant, who was tried in the District Court of Doniphan County, Kansas, on a charge of burglary. The first trial took place in about 1971 and resulted in a guilty verdict. I appealed to the Supreme Court of Kansas where the conviction was reversed. The case involved questions of the right to confrontation under the United States Constitution and the Constitution of the State of Kansas. On remand, and after a second jury trial, the defendant was acquitted. The trial in the District Court was before Chester C. Ingels, District Judge. I was sole counsel for the defendant. Counsel for the State was J. D. Euler, now of Hiawatha, Kansas (Tel. 913-742-7481).

9. Calkins v. Abbott. This was an action for partition of a large tract of real estate in Doniphan County, Kansas, and for an accounting in connection with a farming operation. The action took place in 1971 and 1972 in the District Court of Doniphan County, Kansas, before Chester C. Ingels, District Judge. I represented plaintiff as chief counsel. The matter had been referred to me by Maurice Pope of St. Joseph, Missouri, whose appearance is shown in the case, and who is now deceased. Counsel for the other parties in the case was Robert A. Reeder of Troy, Kansas. The litigation resulted in a judgment of partition.

10. Board of County Commissioners of Doniphan County, Kansas v. Alma M. Green, et al. This was a comprehensive real estate tax foreclosure action brought by me as County Attorney of Doniphan County, Kansas, in about 1965, in the District Court of Doniphan County, Kansas. The case resulted in judgment of foreclosure. It was before Chester C. Ingels, District Judge. I was sole counsel for plaintiff. Several hundred parcels of real estate were foreclosed in this action brought against several hundred defendants. Service of process was complex as was the handling of the case. The case resulted in foreclosure of a substantial number of tracts of real estate, redemption of others by landowners, and the striking of incorrect legal descriptions from the tax rolls of the county. It is impossible for me to state the names and addresses of counsel for defendants in the case.

19. Legal Activities:

As a general proposition, I view my service as United States Magistrate as the most significant of my legal activities. In addition to the litigation matters set out in the answer to Question No. 18, above, when I was engaged in the private practice of law I was involved in the settling of a number of estates in which the decedents had held interests in real estate in several states. Substantial tax questions were involved.

I also served as a member of the Advisory Committee on the Criminal Code to the Kansas Judicial Council. For several years the committee was engaged in redrafting the criminal code and the code of criminal procedure of the state of Kansas. I had an active role in the project, and the codes were ultimately enacted by the Kansas legislature.

My service as chairman of the Kansas Corporation Commission also involved significant legal issues. The KCC is the public utility regulatory body for the state of Kansas, and as such regulates the rates and conditions of service of electric, gas, and communications public utilities. As chairman I presided over many rate proceedings which involved complex questions of law and fact.

II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients, or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.

   Answer: There are none of the above. I divested myself of any arrangements for compensation in 1982 when I was appointed U.S. Magistrate. I am presently a participant in the federal employees thrift savings plan.

2. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated.

   Answer: I am not presently aware of any potential conflicts of interest inasmuch as I have served as United States Magistrate since June, 1982, and have not been engaged in the practice of law or any business arrangements. I will avoid and/or resolve any conflicts if they should arise by a strict adherence to the provisions of 28 U.S.C. § 455, and the Code of Conduct for United States Judges.

3. Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

   Answer: No.

4. Sources and amounts of all income received during calendar year 1988, and calendar year 1989 through August 15:

   Calendar Year 1988:

Salary from U.S. Courts (self)	70,432.96
Salary from U.S. Dept. of Justice (wife)	49,495.68
Salary from State of Kansas, teaching (wife)	87.50
Paine Webber, Inc., interest	30.00
Franklin Life Insurance Co., interest	31.00
Fidelity Bank and Trust, interest	472.00

Peoples Heritage Savings and Loan, interest	507.00
University of Kansas, honorarium for speaking at a seminar	100.00
Nuveen Bond Fund, interest	801.94
Philadelphia Electric Co., dividend	220.00
State of Kansas, income tax refund	1,539.65
Estate of Marjorie McBratney, deceased, residuary legacy of 1/5 of estate (self)	61,166.45

Calendar Year 1989:

Salary from U.S. Courts (self)	54,893.28
Salary from U.S. Dept. of Justice (wife)	37,736.81
Paine Webber, Inc., interest	467.00
Franklin Life Insurance Co., interest	35.31
Fidelity Bank and Trust, interest	320.98
Peoples Heritage Savings and Loan, interest	1,650.00
Nuveen Bond Fund, interest	592.55
Philadelphia Electric Co., dividend	440.00
State of Kansas, income tax refund	1,107.00
Kansas Tax Exempt Municipal Bond Trust	68.50
Wisconsin Public Service Co., dividend	316.00

5. Financial net worth statement: (in lieu of form provided)

(A) Assets:

Bank Accounts:

Fidelity Bank & Trust, Topeka, Ks., checking account with wife, Alleen S. Castellani	4,222.99
Fidelity Bank & Trust, Topeka, Ks., checking account with wife	1,710.00
Fidelity Bank & Trust, Topeka, Ks., certificate of deposit in name of stepson, David Castellani	1,000.00
Peoples Heritage Fed. S & L, Topeka, Ks., checking account with wife	2,260.00
Peoples Heritage Fed. S & L, Topeka, Ks., checking account, stepson and wife	200.00
Peoples Heritage, passbook savings, stepson	102.00
Peoples Heritage, passbook savings, wife	311.00
Peoples Heritage, cert. of deposit, wife	5,300.00

Peoples Heritage, IRA, wife	3,000.00
Peoples Heritage, IRA, wife	3,700.00
Peoples Heritage, IRA, wife	6,400.00
Peoples Heritage, cert. of deposit, with wife	30,000.00
Peoples Heritage, cert. of deposit, stepson	1,500.00
Colonial Savings and Loan, Shawnee-Mission, Kansas, IRA, wife	2,000.00
Total bank accounts	61,705.99
Securities:	
96.321 shares Nuveen Tax Exempt Unit Trust	9,600.00
Federal Employees Thrift Savings Plan	8,868.24
Federal Employees Thrift Savings Plan, wife	12,584.00
Civil Service Retirement System, wife	18,340.80
New York Life Insurance Company, IRA, wife	2,000.00
New York Life Insurance Company, mutual fund, wife	1,000.00
Paine Webber Resource Management Account, with wife	4,986.63
10 units Kansas Tax Exempt Municipal Bond Trust, with wife	10,000.00
400 shares common stock Philadelphia Electric Company, with wife	9,000.00
400 shares common stock Wisconsin Public Service Corp., with wife	9,200.00
Paine Webber IRA	15,961.45
Total securities	101,541.12

Personal Property and Automobiles:

Furniture and household goods	30,000.00
1987 Honda Civic (wife)	6,500.00
1985 Ford Crown Victoria	6,000.00
1987 Honda Civic CRX (stepson)	7,000.00
Total Personal Property and Autos:	49,500.00

Real Estate:

Home at 311 Yorkshire Road, Topeka, Ks.	144,000.00
Home at 6701 West 66th Terrace, Overland Park, Kansas	140,000.00
Rental property at 710 Maine St., Lawrence, Ks.	49,500.00
One-half interest in vacation cabin, Park County, Colorado	25,000.00
Total Real Estate	358,500.00
TOTAL ASSETS	571,247.11

(B) Liabilities:

Real Estate Mortgages and Contracts:

Mortgages on 311 Yorkshire Road, Topeka, Kansas: To Shawnee Federal Savings and Loan, Topeka, Ks.	60,000.00
To Fidelity Bank and Trust, Topeka, Ks.	18,000.00
Mortgage on 6701 W. 66th Terrace, Overland Park, Ks., to Capitol Federal Savings and Loan, Topeka, Kansas	126,819.00
Mortgage on 710 Maine St., Lawrence, Ks., to Capitol Federal Savings and Loan, Topeka, Ks.	36,650.00
Total Real Estate Mortgages and Contracts	241,469.00

Secured Loans:

Peoples Heritage Federal Savings and Loan secured by pledged certificate of deposit	5,000.00
Peoples Heritage Federal Savings and Loan secured by pledged certificate of deposit	20,000.00
Lease balance on 1987 Honda Civic leased from General Electric Leasing Corp.	4,115.00
Total Secured Loans	29,115.00
Contingent Liabilities: None	0.00
TOTAL LIABILITIES	270,584.00

Total Assets	571,247.19
Less: Total Liabilities	(270,584.00)
NET WORTH	300,663.19

6. Have you ever held a position or played a role in a political campaign?

Answer: Yes, as a candidate. I was an unsuccessful candidate for the office of County Attorney of Doniphan County, Kansas, in the Republican primary election in 1956. I was a successful candidate for the same office in 1962, 1964, and 1966. I was a successful candidate for the House of Representatives of the Kansas State Legislature in 1972 and 1974.

III. GENERAL (PUBLIC)

1. Service to the disadvantaged:

When I was in the private practice of law at Troy, Kansas, the bar was small in numbers and had no organized effort for providing service to the disadvantaged. However, I spent several hours each week on an ad hoc basis in counseling with persons who could not pay me, and I made frequent court appearances either without pay or with only nominal remuneration from clients who were without funds. Because it has been more than seven years since I was engaged in the private practice, I do not have records relating to specific instances.

After I became United States Magistrate at Topeka, Kansas, it became my responsibility to appoint counsel for indigent plaintiffs in civil rights litigation. I solicited the assistance of the Topeka Bar Association to obtain volunteers for such service, and I have been able to put together a list of attorneys available for appointment to assist plaintiffs in civil rights cases who have not been able to obtain their own counsel, and who have requested our court to appoint counsel for them.

2. Organizations:

Prior to about 1970 I belonged to the Kiwanis Club of Troy, Kansas. I do not believe that Kiwanis admitted women to membership at that time. My membership terminated when the club was disbanded.

I once belonged to the Elks lodge, but resigned at the time I became U.S. Magistrate in 1982.

The Topeka Lawyers Club previously has not admitted women to membership. I was invited to membership in the organization in about 1984. I worked for and supported efforts to amend the constitution of the club to contain a specific provision that there should be no discrimination in membership on account of gender. The amendment was adopted in September, 1988.

The various fraternal organizations listed in Part I, No. 10, also do not admit women, but have associated organizations for women.

3. Selection process:

There is no judicial selection commission in the District of Kansas.

I wrote letters to Senators Robert Dole and Nancy Kassebaum of Kansas informing them of my interest in being appointed U.S. District Judge. This occurred in the fall of 1988, after Judge Richard Rogers had announced that he would be taking senior status in January, 1989. I later met with each of the senators, and discussed my aspirations with them. In January, 1989, the senators sent my name, along with others, to the Department of Justice as persons they recommended for nomination. I was interviewed at the Department of Justice in Washington on April 27, 1989, and was afterwards advised that I was the person who would be recommended to the President by the department for nomination.

4. No one at any time in the process of selecting me as a judicial nominee has discussed with me any specific case, legal issue or question in a manner that could be interpreted in any way as asking how I would rule on such case, issue, or question.

5. Judicial activism:

   It is my view that the role of a United States District Judge is to decide specific cases and controversies before the court, generally applying the law as established by legislation, and from case law precedents of the United States Supreme Court and the various United States Courts of Appeal.

ABA
AMERICAN BAR ASSOCIATION
Standing Committee on
Federal Judiciary
1800 M Street, NW
Washington, DC 20036
(202) 331-2210

CHAIRMAN
Harold R. Tyler, Jr.
30 Rockefeller Plaza
New York, NY 10112

FIRST CIRCUIT
Ralph I. Lancaster, Jr.
One Monument Square
Portland, ME 04101

SECOND CIRCUIT
William E. Willis
125 Broad Street
New York, NY 10004

THIRD CIRCUIT
Jerome J. Shestack
Suite 3600
1600 Market Street
Philadelphia, PA 19103

FOURTH CIRCUIT
James A. Howard, Sr.
Suite 322A
6160 Kempsville Circle
Norfolk, VA 23502

FIFTH CIRCUIT
Lloyd Lochridge
Suite 1300
919 Congress Avenue
Austin, TX 78701

SIXTH CIRCUIT
John C. Elam
52 East Gay Street
Columbus, OH 43215

SEVENTH CIRCUIT
Joan M. Hall
Suite 4300
One IBM Plaza
Chicago, IL 60611

EIGHTH CIRCUIT
James W. Hewitt
Post Office Box 80268
1815 Y Street
Lincoln, NE 68501

NINTH CIRCUIT
J. David Andrews
40th Floor
1201 Third Avenue
Seattle, WA 98101-3099
Ronald L. Olson
35th Floor
355 South Grand Avenue
Los Angeles, CA 90071

TENTH CIRCUIT
Arthur D. Melendres
Sunwest Building
Suite 1000
Post Office Box 2168
Albuquerque, NM 87103

ELEVENTH CIRCUIT
Sylvia H. Walbolt
Post Office Box 3239
Tampa, FL 33602

DISTRICT OF COLUMBIA CIRCUIT
James J. Bierbower
1308 19th Street, NW
Washington, DC 20036

FEDERAL CIRCUIT
John D. Lane
Suite 1100
1666 K Street, NW
Washington, DC 20006

BOARD OF GOVERNORS LIAISON
Robert MacCrate
28th Floor
125 Broad Street
New York, NY 10004

STAFF LIAISON
Irene R. Emsellem
American Bar Association
1800 M Street, NW
Washington, DC 20036
(202) 331-2210
ABA/NET ABA 463

CONFIDENTIAL

September 13, 1989

Hon. Joseph R. Biden, Jr.
Chairman, Committee on the Judiciary
United States Senate
SD 224
Washington, D.C. 20510-0802

RE: MAGISTRATE GEORGE THOMAS VAN BEBBER
United States District Court, District of Kansas

Dear Senator Biden:

Thank you for affording this Committee an opportunity to express an opinion pertaining to the nomination of Magistrate George Thomas Van Bebber for appointment as Judge of the United States District Court for the District of Kansas.

Our Committee is unanimously of the opinion that Magistrate Van Bebber is Well Qualified for this appointment.

A copy of this letter has been sent to Magistrate Van Bebber for his information.

Sincerely,

Ralph I. Lancaster

Ralph I. Lancaster, Jr.
Chairperson

RIL/sm

cc All Committee Members
Magistrate George Thomas Van Bebber
Barbara Drake, Esq.

SUSAN WEBBER WRIGHT

Birth:	August 22, 1948	Texarkana, Arkansas
Residence:	Arkansas	
Marital Status:	Married	Robert Ross Wright, III one child
Education:	1966 - 1970	Randolph-Macon Woman's College B.A. degree
	1970 - 1972	University of Arkansas M.P.A. degree
	1972 - 1975	University of Arkansas School of Law J.D. degree
Bar:	1975	Arkansas
Experience:	1975 - 1976	Law Clerk to Hon. J. Smith Henley U.S. Court of Appeals for the Eighth Circuit
	1976 - present	Law Professor University of Arkansas School of Law
	1980 - 1981	Visiting Associate Professor Ohio State University College of Law
	1982 - 1983	Visiting Associate Professor Louisiana State University Law Center
Office:	400 West Markham Little Rock, Arkansas 72201 501 371-1071	
Home:	1409 North Hughes Little Rock, Arkansas 72207	

To be U. S. District Judge for the Eastern and Western District of Arkansas

QUESTIONNAIRE FOR JUDICIAL NOMINEES

I. BIOGRAPHICAL INFORMATION (PUBLIC)

1. Full name (include any former names used.)

Susan Webber Wright. Until my marriage in 1983, my name was Susan Webber.

2. Address: List current place of residence and office address(es).

Residence: 1409 N. Hughes Street
Little Rock, AR 72207

Office: University of Arkansas at Little Rock
School of Law
400 West Markham
Little Rock, AR 72201

3. Date and place of birth.

August 22, 1948. Texarkana, Arkansas.

4. Marital Status (include maiden name of wife, or husband's name). List spouses's occupation, employer's namd and business address(es).

I am married to Robert Ross Wright, III. He is the Donaghey Distinguished Professor of Law at the University of Arkansas at Little Rock School of Law. His employer's address is:

400 West Markham
Little Rock, AR 72201

5. Education: List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.

1966-1970:
Randolph-Macon Woman's College, B.A., 1970

1970-72:
University of Arkansas, M.P.A., 1973

1972-75:
University of Arkansas School of Law, J.D., 1975

6. Employment Record: List (by year) all business or professional corporations, companies, firms, or other

enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including firms with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.

7/76-Present:
University of Arkansas at Little Rock
  1976-78: Assistant Dean and Assistant Professor of Law
  1978-80: Assistant Professor of Law
  1980-83: Associate Professor of Law
  1983- present: Professor of Law

1/85 - Present:
Stewpot (non-profit organization which provides free meals to indigents)
Volunteer worker (every other Monday)

8/82-5/83:
Visiting Associate Professor of Law
Louisiana State University Law Center

1/81-6/81:
Visiting Associate Professor of Law
Ohio State University College of Law

5/80-7/80:
Visiting Assistant Professor of Law
University of Arkansas, Fayetteville
School of Law

1978-79
Director and Secretary:
Las Casitas Horizontal Property Regime
(condominium owners' association)

5/79-8/79:
Research Assistant
Arkansas Constitutional Convention

5/75-7/76:
Law Clerk
J. Smith Henley, United States Circuit Judge
Eighth Circuit Court of Appeals

5/74-8/74:
Summer Clerk
Wright, Lindsey & Jennings
Little Rock, Arkansas

8/73-5/74:
Student worker
University of Arkansas School of Law

Law Library
Fayetteville, Arkansas

5/73-8/73:
Receptionist
Young & Patton, Attorneys-at-Law
Texarkana, Arkansas

6/72-8/72:
Waitress
Howard Johnson's
Texarkana, Texas

1/72-6/72:
Intern
Congressman John Paul Hammerschmidt
Washington, D.C.

6/71-8/71:
Intern
Consumer Protection Division
Office of the Attorney General
State of Arkansas

6/70-8/70
Temporary employee
Safeway Stores
Texarkana, Arkansas-Texas

7. Military Service: Have you had any military service? If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received.

No.

8. Honors and Awards: List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.

Editor-in-Chief, Arkansas Law Review
Jim G. Ferguson Award (law school--based on class rank)
Friday, Eldredge & Clark Scholarship (law school)
Fellowship, University of Arkansas (for M.P.A.)

9. Bar Associations: List all bar associations, legal or judicial-related committees or conferences of which you are or have been a member and give the titles and dates of any offices which you have held in such groups.

American Bar Association
Arkansas Bar Association

Pulaski County Bar Association
Arkansas Association of Women Lawyers (Vice President, 1977-78)
Member, Volunteer Organization for Central Arkansas Legal Services (VOCALS)
Member, Advisory Committee to the United States Court of Appeals for the Eighth Circuit (1983-88)
Member, Advisory Committee on Reappointment of U.S. Magistrate (1986)
Member, *ad hoc* Subcommittee on *Pro Bono* Services of Federal Practice Committee (1984)
Arkansas Bar Foundation: I am not yet a member but will become a member upon paying a total of $1500; I still owe about $750.

10. Other Memberships: List all organizations to which you belong that are active in lobbying before public bodies. Please list all other organizations to which you belong.

Arkansas Arts Center
Friends of Arkansas Educational Television Network
Arkansas Museum of Science and History
Friends of the Zoo (Little Rock)
Pulaski County Republican Committee
Arkansas State Republican Party
Trinity Cathedral Parish

11. Court Admission: List all courts in which you have been admitted to practice, with dates of admission and lapses if any such memberships lapsed. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.

Arkansas, 1975

Federal District Court, Eastern and Western Districts of Arkansas, 1987

United States Court of Appeals for the Eighth Circuit, 1988

12. Published Writings: List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited. Please supply one copy of all published materials not readily available to the Committee. Also, please supply a copy of all speeches by you on issues involving constitutional law or legal policy. If there were press reports about the speech, and they are readily available to you, please supply them.

"The Arkansas Law of Oil and Gas," Chapters I and II, 9 *UALR L.J.* 223, Chapter III, 9 *UALR L.J.* 467 (1986-87), Chapter IV, 10 *UALR L.J.* 5, Chapter V, 10 *UALR L.J.* 699 (1987-88)

(work on Chapter VI in progress)

"Multiple Ownership of Oil and Gas Interests," 1987 Arkansas Natural Resources Law Institute Proceedings

Land Use in a Nutshell, co-authored with Robert R. Wright (West Publishing Co., 1978; 2nd ed. 1985)

"Fiduciary Duties Arising From Ownership of Oil and Gas Interests," 1985 Arkansas Natural Resources Law Institute Proceedings

"Damages or Compensation for Unconstitutional Land Use Regulation," 37 Arkansas Law Review 612 (1984)

"Texaco v. Short and Possible Dormant Mineral Legislation for Arkansas," 1983 Arkansas Natural Resources Law Institute Proceedings

"Arkansas Corporate Fiduciary Standards: Interested Directors' Contracts and the Doctrine of Corporate Opportunity," 4 UALR L.J. 39 (1982)

"Medicolegal Issues in Wound Management," 1 UALR L.J. 455 (1979)

Student note: 28 Arkansas Law Review 162 (1974)

13. Health: What is the present state of your health? List the date of your last physical examination.

My health is excellent. June 8, 1989, was the date of my last physical examination. This examination updated an earlier examination in November, 1988.

14. Judicial Office: State (chronologically) any judicial offices you have held, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

I have never held judicial office.

15. Citations: If you are or have been a judge, provide: (1) citations for the ten most significant opinions you have written; (2) a short summary of an citations for all appellate opinions where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings; and (3) citations for significant opinions on federal or state constitutitonal issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, please provide copies of the opinions.

I have never been a judge.

16. Public Office: State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.

I have never held nor sought election to public office.

17. Legal Career:

a. Describe chronologically your law practice and experience after graduation from law school including:

1. whether you served as clerk to a judge, and if so, the name of the judge, the court, and the dates of the period you were a clerk;

I served as a law clerk from May, 1975 until July, 1976 for Judge J. Smith Henley of the United States Court of Appeals for the Eighth Circuit.

2. whether you practiced alone, and if so, the addresses and dates;

I did not practice alone.

3. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been connected, and the nature of your connection with each;

7/76 - Present (with leaves of absence for visiting positions):

University of Arkansas at Little Rock
School of Law
400 West Markham
Little Rock, AR 72201

1976-78: Assistant Professor of Law and Assistant Dean
1978-80: Assistant Professor of Law
1980-83: Associate Professor of Law
1983 - present: Professor of Law

5/79 - 8/79 Research Assistant:

Arkansas Constitutional Convention
State Capitol Building
Little Rock, AR 72201

5/80 - 7/80 Visiting Assistant Professor:

University of Arkansas
School of Law
Waterman Hall
Fayetteville, AR 72701

1/80-6/81 Visiting Associate Professor:

Ohio State University
College of Law
1659 North High Street
Columbus, OH 43210

8/82-5/83 Visiting Associate Professor:

Louisiana State University
Law Center
Baton Rouge, LA 70803

b. What has been the general character of your law practice, dividing it into periods with dates if its character has changed over the years?

Since 1978 I have been working as a full-time, tenure-track law professor. My efforts have focused on teaching, writing, and the work of various university and law school committees. The courses I have taught include Property, Oil and Gas, Water Law, Land Use, Agency and Partnership, and Corporations. I have researched and published law review articles in these areas, copies of which I have attached to this questionnaire. I have also co-authored with my spouse two editions of a book published by West Publishing Company entitled Land Use in a Nutshell.

The following university officials are familiar with my work as a law professor:

President Ray Thornton
University of Arkansas
P. O. Box 3017
Little Rock, AR 72204 Telephone: (501) 373-2770

Chancellor James H. Young
University of Arkansas at Little Rock
2801 South University
Little Rock, AR 72204 Telephone: (501) 569-3200

D. Fenton Adams, Acting Dean
University of Arkansas at Little Rock
School of Law
400 West Markham
Little Rock, AR 72201 Telephone: (501) 371-2268

With the exception of pro bono cases, any law practice that I have had during this period of time related tc the areas of law which I taught.

2. Describe your typical former clients, and mention the areas, if any, in which you have specialized.

I have worked for other lawyers and their clients in the areas of oil and gas and property law. If I have a specialty, it is oil and gas law, particularly the law governing the relationship of the lessor and the lessee. Some of the issues lawyers have consulted me about are the right of a mineral cotenant to develop the minerals without the consent of all cotenants, the deductibility of compression costs from a landowner's royalty, the extent of the duty owed by the owner of the executive right to non-executive interest owners, and the right of a mineral owner to interfere with a surface owner's use.

Since 1983 I have been invited every other year to be a speaker at the Arkansas Natural Resources Law Institute. The topics of my papers have been as follows:

1983: "Texaco, Inc., v. Short and Possible Dormant Mineral Legislation for Arkansas"

1985: "Fiduciary Duties Arising from Ownership of Oil and Gas Interests"

1987: "Multiple Interests in Oil and Gas Ownership"

1989: "Recent Developments in the Arkansas Law of Oil and Gas"

Attorneys who have consulted me include Dennis Shackleford of El Dorado, Arkansas and Michael G. Thompson of Little Rock. Although I do not recall that he has ever consulted me on a particular case, Mr. Oliver Clegg of Magnolia, Arkansas, is familiar with my scholarship and has discussed many oil and gas matters with me over the years. Other oil and gas practitioners who from time to time have discussed oil and gas issues with me include Paul Crumpler of Magnolia, Arkansas; James E. West and Gerald DeLung of Fort Smith, Arkansas; and Charles A. Morgan and Demaris Hart of Texarkana, Arkansas.

c. 1. Did you appear in court frequently, occasionally, or not at all? If the frequency of your appearances in court varied, describe each such veriance, giving dates.

Occasionally. I am prohibited by regulations of the University of Arkansas Board of Trustees from carrying on more than an occasional, largely consultive practice.

2. What percentage of these appearances was in:

(a) federal courts;

Although I have been counsel of record in two cases in federal courts, I did not appear in court.

(b) state courts of record;

100%

(c) other courts of record.

0%

3. What percentage of your litigation was:

(a) Civil;

100%

(b) Criminal.

0%

4. State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

In all the cases in which I have been counsel of record, the case has not been tried to verdict or judgment. The only exception to this are probate cases.

5. What percentage of these trials was:

(a) jury;

0%

(b) non-jury

100%

18. Litigation: Describe the ten most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as

to each case:

(a) the date of representation;
(b) the name of the court and the name of the judge or judges before whom the case was litigated; and
(c) The individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

As indicated above, I have worked since 1978 as a full-time law professor and have not had an extensive law practice. However, I have participated in the following cases as indicated.

In these cases my participation is a matter of record, as indicated:

1) Matter of Estate of Dean Parker, Deceased (1985)
Pulaski County Probate, Third Division, No. 85-1263
Judge: The Honorable Judith Rogers (now a Judge on the Arkansas Court of Appeals)
I served as Counsel and temporary administratrix and attorney *ad litem* for a minor child.

Counsel for other parties:

C. Scott Clark
628 W. Broadway
Little Rock, AR 72201 Telephone: (501) 375-7652

Jerry Kelly
P. O. Box 390
Carlisle, AR 72024 Telephone: (501) 552-3840

2) Annette Bates et al. v. Delta Career College, No. 88-2485 (1988)
Pulaski County Chancery, First Division
Judge: The Honorable Lee A. Munson

I served as associate counsel in this case. This was a *pro bono* effort in connection with my membership in VOCALS (Volunteer Organization for Pulaski County Legal Services). Our clients were under-educated, unemployed persons who had paid considerable tuition to the defendant to learn skills for jobs in nursing homes. We alleged that the defendant had misrepresented to our clients that jobs were available and that training offered by defendant was necessary to obtain jobs. We had petitioned the court to certify a class action and asked for rescission of the training contracts on grounds of misrepresentation. When a "graduate" of the defendant was awarded a substantial jury verdict in a separate action, our clients wanted to pursue an action at law. Therefore, we dismissed the case in chancery to allow our clients to pursue a fee-generating action at law with a private attorney.

Co-counsel:

Griffin J. Stockley and Austin Porter
Central Arkansas Legal Services
209 W. Capitol Ave., Suite 36
Little Rock, AR 72201 Telephone: (501) 376-3423

Opposing Counsel:

Doug Wood and Raymond Weber
Wood Law Firm
P. O. Box 5606
North Little Rock, AR 72119 Telephone: (501) 376-3700

3) Michael Brannam v. Our Way, Inc.
Eighth Circuit Court of Appeals, No. 88-1374 EA (1988)

I was an associate counsel who helped with the appeal of this *pro bono* case for VOCALS. The plaintiff was summarily evicted from his residence, a federally-subsidized home for the handicapped, pursuant to the Arkansas Forcible Entry and Detainer statute. We brought a § 1983 action alleging that he was deprived of federal constitutional and statutory rights under color of state law. The case was dismissed before disposition on appeal because of the death of our client.

Co-counsel:

Griffin J. Stockley
Central Arkansas Legal Services
209 W. Capitol Ave., Suite 36
Little Rock, AR 72201 Telephone: (501) 376-3423

4) Hugh Lynn Adams, Sr. Executor of the Estate of Curt C. Copeland, Deceased v. Betty C. Forsyth, Lisa Denton and Billy Denton
U.S. District Court, W.D. Arkansas, No. 87-6050 (1988)
Judge: The Honorable Morris S. Arnold

This was a probate case removed to federal court. I became an attorney of record in this case shortly before it was dismissed by agreement of the parties.

Co-counsel:

Phil Stratton
1100 Harkrider St.
Conway, AR 72032 Telephone: (501) 327-6526

Robert R. Wright, III
1409 N. Hughes
Little Rock, AR 72207 Telephone: (501) 661-1321

5) Estate of Philip G. Alston
Pulaski County Probate, Fourth Division, No. 67310
Judge: The Honorable Bruce Bullion

I served as executrix for this estate in 1980-82.

In the following cases I have served as a consultant but not as an attorney of record:

6) First Commercial Bank v. McGaughey Brothers, Inc. (No. CA 86-273)

In this case, which is currently on Appeal to the Arkansas Court of Appeals, I was consulted by counsel for the appellant on an agency question. The primary issue is whether an interested agent's knowledge of a transaction should be imputed to the principal.

Counsel for Appellant:

Michael G. Thompson
Friday, Eldredge & Clark
2000 First Commercial Building
Little Rock, AR 72201 Telephone: (501) 376-2011

7) Hanna Oil and Gas Company v. Taylor, 297 Ark. 80, 759 S.W.2d 563 (1988)

In this case I was consulted by counsel for the appellee. The main issue was the computation of the landowner's royalty reserved in an oil and gas lease. The appellant contended that both lessee and lessor should bear the costs of compressing natural gas, while the appellee contended that all such costs should be borne by the lessee. The Arkansas Supreme Court held for the appellee.

Counsel for Appellee:
Michael G. Thompson
Friday, Eldredge & Clark
2000 First Commercial Building
Little Rock, AR 72201

8) Reddoch v. Blair, 285 Ark. 446, 688 S.W.2d 286 (1985)

This was a will contest in which I helped counsel for the appellant. The lower court had set aside a will on grounds of undue influence, yet held that the revocation clause in that will was valid. The Supreme Court reversed the lower court and held that the entire will was valid.

Counsel for Appellant was my spouse:

Robert R. Wright, III
1409 N. Hughes
Little Rock, AR 72207 Telephone: (501) 661-1321

19. Legal Activities: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe the nature of your participation in this question, please omit any information protected by the attorney-client privilege (unless the privilege has been waived.)

My most significant efforts have been in legal education, particularly teaching and writing. My role as a law professor has included helping law students to become competent, ethical, and diligent lawyers. I try to encourage students to appraise the goals and policies our laws promote and to consider not only what the law is, but what it should be.

In connection with my role as a legal educator, I have served on site inspection teams at seven law schools for the Committee on Accreditation of the ABA's Section of Legal Education and Admissions to the Bar.

Although most of my work has concerned legal education, I served as member of the Advisory Committee for the United States Court of Appeals for the Eighth Circuit from 1983 until 1988. The role of this committee is to advise the judges of the circuit on matters of concern to lawyers and the court, including, but not limited to, the court's rules and procedures.

II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients, or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.

I have co-authored with my husband a book entitled Land Use in a Nutshell and receive royalties from the sales of that book from West Publishing Company. My husband and I have a contract with West for a third edition of this book and will receive royalties from its sales.

Through my employment with the University of Arkansas I have a §403 (b) teacher's retirement contract with the Teachers Insurance and Annuity Association (TIAA) and College Retirement Equities Fund (CREF). Upon severance of my employment with the university, I have the right to begin receiving an annuity from TIAA-CREF at any time but would pay a penalty if I began withdrawals prior to age 59 1/2. My contract with TIAA-CREF has no cash value and cannot be assigned or transferred. My husband, a law professor, also has a contract with TIAA-CREF but I have waived my spousal benefits to his contract.

As indicated in the attached net worth statement and accompanying schedule, my husband is due legal fees from the C. C. Copeland Estate and the Alma Stewart Wright Estate. Currently he is working on a matter for the law firm of Campbell and Mounger of Houston, Texas. The firm represents John Rodgers, Jr., a beneficiary of the estate of H. Lloyd Rodgers and Geneva Kathryn Rodgers. He is due no legal fees from this work as of July 27, 1989, but most certainly will be owed fees soon (he has not yet consumed a $3000 retainer).

2. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated.

Consistent with the Code of Judicial Conduct, I would disqualify myself from matters involving a potential conflict of interest, unless the parties, after full disclosure, agreed to permit me to hear the case.

The procedure I would follow to determine areas of concern includes keeping myself informed about my financial interests and those of my family. I would review the identities of the interested parties in each case assigned to me to determine whether there might be a potential conflict of interest.

3. Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

As indicated in my answers to questions 1 and 2 of Part II above, I will continue to receive royalties from book sales from West Publishing Company and have a contract with West to publish a new edition of Land Use in a Nutshell. However, if my workload does not permit that, I will withdraw from the contract and let my husband write the book alone.

4. List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar, year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding $500 or more (If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here.)

See attached financial disclosure report.

5. Please complete the attached financial net worth statement in detail (Add schedules as called for).

The net worth statement and schedules are attached.

6. Have you ever held a position or played a role in a political compaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and repsonsibilities.

During the fall of 1988, I was the Arkansas State Chairman of Lawyers for Bush/Quayle. My responsibilities were to recruit lawyers who were willing to publicize their support of the Republican Presidential ticket. I was not involved in fund raising, although I believe that the lawyers whose names I submitted were asked to contribute to the campaign or to the Republican Party.

During the Republican Primaries of 1988, I was a campaign worker for Vice President George Bush in my precinct.

During the Democratic Party Primaries of 1978, I was a campaign worker in my precinct for Congressman Ray Thornton, a personal friend and former employer, who was running for the United States Senate.

During the General Election of 1974, I was a campaign worker in Fayetteville, Arkansas for the re-election of Republican Congressman John Paul Hammerschmidt of the Third District.

During the Democratic Party Primaries of 1966, I was a campaign worker in Texarkana, Arkansas, for Richard S. Arnold (now a United States Circuit Judge), who was running for Congress from the Fourth District.

III. GENERAL (PUBLIC)

1. An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

I have been a member of Volunteers' Organization for Pulaski County Legal Services (VOCALS) since its inception in the fall of 1982. At that time I was a Visiting Associate Professor at the Louisiana State University Law Center and was therefore unable to accept cases in Arkansas. However, I had the option of becoming a member by contributing $250 annually, which I did. Since then I have contributed each year. VOCALS works in conjunction with paid legal services staff, and cuts in funding for legal services have made financial support vital.

Although my VOCALS membership has been maintained through financial contributions, I have also worked on two cases for VOCALS. These cases are listed in my answers to Question 18 of Part I and are as follows:

1) Annette Bates et al. v. Delta Career College (1988)
In this case our clients were under-educated, unemployed persons who had paid the defendant considerable tuition through government-guaranteed student loans to learn skills for jobs in nursing homes. We alleged that the defendant had misrepresented to our clients that jobs were available and that training offered by the defendant was necessary to obtain these jobs. We had petitioned the court to certify a class action and asked for rescission of the training contracts on grounds of misrepresentation. When a graduate of the defendant was awarded a substantial jury verdict in a separate action, our clients wanted to pursue an action at law. Therefore, we dismissed the case in chancery to allow our clients to pursue a fee-generating action with a private attorney.

Although I did not keep records of my time in working on this case, I spent several hours conferring with co-counsel and researching the law.

2) Michael Brannam v. Our Way, Inc. (1988)
I became involved in this case at the appellate stage. Our client had been summarily evicted from his residence, a federally-subsidized home for the handicapped, pursuant to the Arkansas Forcible Entry and Detainer statute. After he had been

summarily evicted the defendant dismissed the forcible entry and detainer action, without a hearing on the merits. We brought a §1983 action, alleging that our client was deprived of federal constitutional and statutory rights under color of state law. The case was dismissed before disposition on appeal because of the death of our client.

2. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion. Do you currently belong, or have you belonged, to any organization which discriminates--through either formal membership requirements or the practical implementation of membership policies? If so, list, with dates of membership. What have you done to try to change these policies?

I have been a member of the Arkansas Association of Women Lawyers since 1976. At the time I became a member, the organization's constitution provided that its membership was open to women lawyers. Several years ago the organization voted to amend this provision to permit men who are lawyers to join. I voted in favor of the amendment.

I have never belonged to any other club or organization that discriminates on the basis of race, sex, or religion. I sometimes use my husband's membership in the Capital Club in Little Rock, but that club has never discriminated against blacks, women, or anyone else. In fact, it has had a black president.

3. Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, did it recommend your nomination? Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and interviews in which you participated).

There is no selection commission in my jurisdiction to recommend candidates for nomination to the federal courts.

I was selected as follows: I contacted Congressman John Paul Hammerschmidt to notify him of my interest in this judgeship. I sent him a resume. He selected me as one of three persons to be considered by the Department of Justice. I interviewed with several persons in the Department. The Department of Justice notified me that I had been tentatively selected and that the F.B.I. would begin an investigation. The F.B.I. conducted an investigation. Later the Department of Justice notified me to fill out the Personal Data Questionnaire and send it to the ABA's Standing Committee on Federal Judiciary.

4. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as asking how you would rule on such a case, issue, or question? If so, please explain fully.

No.

5. Please discuss your views on the following criticism involving "judicial activism."

The role of the Federal judiciary within the Federal government, and within society generally, has become the subject of increasing controversy in recent years. It has become the target of both popular and academic criticism that alleges that the judicial branch has usurped many of the prerogatives of other branches and levels of government.

Some of the characteristics of this "judicial activism" have been said to include:

a. A tendency by the judiciary toward problem-solution rather than grievance-resolution;

b. A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals;

c. A tendency by the judiciary to impose broad, affirmative duties upon governments and society;

d. A tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness; and

e. A tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.

I believe that the role of the federal judiciary is to decide individual cases and controversies within its jurisdiction. I do not believe that a federal judge should attempt to usurp the powers of the executive or legislative branches of government by judgments and orders that reach beyond the bounds of deciding the individual case or controversy. Neither do I believe that a federal judge should loosen jurisdictional constraints established by the Constitution and by Congress.

A federal judge should, of course, be aware of the effects of particular judicial decisions upon society and public policy. He or she should therefore carefully structure a decision to fit the circumstances of the case so that it will be valuable as precedent for similar cases. The role of the federal judiciary is to resolve the issues the cases before it in accordance with the Constitution and laws enacted pursuant to it.

[redacted] FINANCIAL STATEMENT

NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS			
Cash on hand and in banks	108	187	20
U.S. Government securities—add schedule	1	450	—
Listed securities—add schedule	168	760	—
Unlisted securities—add schedule	109	609	—
Accounts and notes receivable:			
Due from relatives and friends	—	—	
Due from others	10	150	—
Doubtful	9	000	—
Real estate owned—add schedule	185	462	.50
Real estate mortgages receivable	—		
Autos and other personal property	25	400	—
Cash value—life insurance	10	515	52
Other assets—itemize: *			
Total assets	603	134	22

LIABILITIES			
Notes payable to banks—secured	2	179	51
Notes payable to banks—unsecured	–	–	
Notes payable to relatives	—	–	
Notes payable to others	–	–	
Accounts and bills due	1	000	(approx
Unpaid income tax	–		
Other unpaid tax and interest	—		
Real estate mortgages payable—add schedule	110	329	04
Chattel mortgages and other liens payable	6	050	00.
Other debts—itemize:	—		
	—		
Total liabilities	119	558	55
Net worth	483	575	67
Total liabilities and net worth	603	134	22

CONTINGENT LIABILITIES			
As endorser, comaker or guarantor			
On leases or contracts			
Legal Claims			
Provision for Federal Income Tax			
Other special debt			

GENERAL INFORMATION

Are any assets pledged? (Add schedule.) Yes See schedule

Are you defendant in any suits or legal actions? No

Have you ever taken bankruptcy? No

* Please note My husband and I each have a §403 (b) retirement contract with TIAA-CREF These contracts have no cash value and cannot be assigned They do have death benefits If you require more information, I will provide it.

Net Worth Statement--Schedule--Assets

Cash on hand and in banks

Commercial National Bank (Little Rock)	
CD 4100000725449 (trust)[1] 6/15/89	$ 2,040.27
UNB[2] Investor's Account 93-006-203 7/10/89	3,000.00*[3]
UNB Account 86-028-375	1,100.00*
UNB Account 88-034-973 6/29/89	919.11*
UNB Account for Robert R. Wright	9,000.00*
Estate of Alma S. Wright (Robert's 1/2) 5/30/89	1,196.33
CNB[4] Account 1-408-7 6/30/89	639.96*
CNB Account 45-063-4 6/30/89	6,043.95*
CNB Saving Acct. 100-645-2 6/30/89	3,181.01
CNB CD 503340 6/30/89	14,000.00
CNB CD 503944 6/30/89	5,762.16
CNB CD 506427 6/30/89	7,600.06
CNB CD 506941 6/30/89	22,311.90
UNB CD 1331237 4/17/89[5]	5.217.02
UNB CD 1331277 5/3/89	5,384.16
UNB CD 1331330 6/9/89	10,791.27
UNB CD 1331560 5/10/89	10,000.00
TOTAL	$ 108,187.20

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[1] This item is held by the Robin E. Wright Trust.

[2] UNB refers to Union National Bank, Little Rock, Arkansas.

[3] Accounts marked with an asterisk are active and the dollar amounts are only approximate as of the date indicated.

[4] CNB refers to Commercial National Bank of Texarkana, Arkansas. All items listed are held in the names of my mother (Betty G. Webber) and me jointly, or in the names of my mother, my sister, and me jointly. One item (CD 506427) is held in the name of my mother, P.O.D. to me.

[5] This and the following three CD's are held in the joint names of Betty G. Webber, Marian W. Williamson, and Susan W. Wright.

Net Worth Statement--Schedule--Assets (valuation date: 6/28/89 close)

Government Securities

U.S. Treasury Strip (Robin E. Wright Trust)	$1,450

Net Worth Statement--Schedule--Assets

Listed Securities (valuation date: 6/28/89 close unless otherwise noted)

Robin E. Wright Trust:	
Prudential-Bache Money Mart Assets	$ 166
Prudential-Bache Money Mart Plan	8,196
Blackstone Target Trust	988
Tyson Foods Common Stock (9-28-89)	2,575
Susan Webber Wright IRA:	
Prudential-Bache Money Mart Assets	161
Prudential-Bache Equity Fund	7,888
Prudential-Bache Growth Opportunity Fund	4,760
Robert Wright SEP/IRA:	
Prudential-Bache Money Mart Assets (9-21-89)	374
Prudential-Bache Equity Fund	16,740
Robert Wright:	
Prudential-Bache Equity Fund	22,511
Prudential-Bache Growth Opportunity Fund	12,253
Prudential-Bache Municipal High Yield Fund	10,244
Prudential-Bache Money Mart Assets	2,210
Prudential-Bache Equity Income Fund (9-21-89)	2,017
Susan Webber Wright:	
Prudential-Bache Money Mart Assets	24
Prudential-Bache Municipal Fund	1,325
Keystone Precious Metals Fund	1,728
Robert R. Wright, Executor of the Estate of Alma S. Wright:[1]	
Monsanto Common Stock (75 shares)	8,513
Prudential-Bache Money Mart Fund	14,695
Prudential-Bache Incomevertible Fund	27,090
Prudential-Bache High Yield Fund	24,302
TOTAL	$168,760

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[1] My husband, Robert Wright, and his brother will each own one-half of these assets upon distribution from the estate.

Net Worth Statement--Schedule--Assets

Unlisted Securities (valuation date: 6/28/89 close unless otherwise noted)

Robin E. Wright Trust:	
Chicago, Ill. Single Family Mortgage	$ 1,355
Ryland III Series YY	945
CD Columbia Savings	1,095
CD Columbia Savings	2,141
Susan Webber Wright IRA:	
CD Imperial Savings	4,332
Betty G. Webber or Susan Webber Wright:	
Commercial Bankshares, Inc. 9% Cumulative Preferred Stock	16,000
Commercial Bankshares, Inc. Common Stock (no value)	0
Robert Wright SEP/IRA:	
American Southwest Series 66F	954
CD Columbia Savings	1,071
Prudential-Bache Energy Inc Fund 25	2,250
Robert Wright:	
Northwest Arkansas Bank (stock)	2,000
Jonesboro, Ark. Revenue Bond (9-21-89)	4,993
Prince George's County, Md. Rev. Bond	25,511
Arkansas State Univ. Revenue Bond	10,962
Polaris, Inc Fund III	16,000
Prudential-Bache Energy Inc Fund 23	3,000
Prudential-Bache Energy Inc Fund 22	8,000
TOTAL	$109,609

Net Worth Statement--Schedule--Assets

Accounts and notes receivable: Due from others

Attorney's fees:	
Estate of C. C. Copeland, Deceased	$5,150
Estate of Alma S. Wright, Deceased	5,000
TOTAL	$10,150

Net Worth Statement--Schedule--Assets

Accounts and Notes Receivable--Doubtful

Judy Bartsch--amount due from buyer's breach of contract of sale of condominium	$9,000

(This claim is the subject of a pending lawsuit and will probably be settled for much less than the stated amount.)

Net Worth Statement--Schedule--Assets

Real Estate Owned

Residence, 1409 N. Hughes, Little Rock, AR	
Condominium, 2001 Reservoir Rd., #4, Little Rock, AR	$120,000.00
Unimproved 128.3 acres, 1/4 interest. (Tract 2, Block 2 Decatur Graves Survey A-288, Harrison County, Texas (21.5 acres); Tract 1, Block 1, E. Lipscomb Survey A-415, Harrison Co., Texas (106.8 acres)	40,000.00
Remainder interest in undivided 1/2 of Part of the E 1/2, NW 1/4, Section 18, T 16S, R 24W (65.68 acres)	9,622.50
Severed, non-producing mineral interests listed below, estimated value:	15,340.00
Total	500.00[1]
	$185,462.50

Property descriptions of severed mineral interests (all are in Arkansas):

NE 1/4 NE 1/4, Section 7, T 16S, R 24W (40 acres) (1/2 interest)
NE 1/2 NW 1/4, Section 8, T 16S, R 24W (80 acres) (1/2)
SW 1/4 NW 1/4, Section 10, T 16S, R 24W (40 acres) (1/2)
E 1/2, NW 1/4, Section 10, T 16S, R 24W (80 acres) (1/2)
W 1/2, NE 1/4 & E 1/2, NW 1/4, Section 24, T 17S, R 25W (160 acres) (1/16)
W 1/2 NW 1/4, Section 25, T 17S, R 25W (80 acres) (1/4)
SW 1/4, NE 1/4, Section 26, T 17S, R 25W (40 acres) (1/4)
NW 1/4, SW 1/4, Section 27, T 19S, R 25W (40 acres) (We are not certain about this one. The property description, found in a notebook of my late mother-in-law, might be wrong.) The correct description might be NE 1/4, SE 1/4, T 17S, R 25W.

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[1] Mineral interests in Arkansas are not separately assessed for property taxation unless they are producing. They are difficult to evaluate. This value is based upon an appraisal of these interest made for the purposes of the federal estate tax return of my mother-in-law in 1984.

Net Worth Statement--Schedule--Assets

Autos and Other Personal Property

1984 Buick LeSabre	$ 5,275
1985 Toyta Camry	5,625
Household furnishing & appliances	12,500
Jewelry	2,000
TOTAL	$25,400

Net Worth Statement--Schedule--Assets

Schedule--Cash Value of Life Insurance (as of 7/5/89)

Shelter Insurance Policy No. L-289831	$ 365.00
Aetna Insurnace Policy No. G 1 194646	6,865.11
TransAmerica Occidental Policy N. 92194668	3,285.41
TOTAL	$10,515.52

Net Worth Statement--Schedule--Liabilities

Notes Payable to Banks--Secured

Commercial National Bank, Texarkana, Arkansas Secured by CD 506427; balance due 9-28-89	$2,179.51

Net Worth Statement--Schedule--Liabilities (7/5/89)

Real Estate Mortgages

First Commercial Mortgage (on residence)	$71,435.04
Superior Federal (on condominium)	38,894.00
TOTAL	$110,329.04

Net Worth Statement--Schedule--Liabilities (7-5-89)

Chattel Mortgages and Other Liens Payable

Automobile Loan (David Wright's Nissan)--payable to Twin City Bank, North Little Rock	$6,050.00

Net Worth Statement--Schedule--Liabilities

Assets Pledged

CNB CD 506427 is pledged as security for the note at Commercial National Bank in Texarkana. The balance due as of 9-28-89 is $2,179.51.

September 24, 1989

Susan Webber Wright
1409 N. Hughes St.
Little Rock, AR 72207

Judicial Ethics Committee
Administrative Office of the
United States Courts
Washington, D. C. 20544

Dear Committee Members:

This letter is to explain my response to Item III (Non-Investment Income) of my Initial A0-10 Report dated 9-22-89. Both my spouse and I receive salaries from the University of Arkansas at Little Rock and royalties from West Publishing Company. However, the amounts of income reported for the reporting period are those received solely by me.

Sincerely,

Susan W Wright
Susan W. Wright

AO-10
Rev. 1/89

FINANCIAL DISCLOSURE REPORT

Annual Report Due by May 15 from Judicial Officers and certain Judicial Employees (28 USCA App. 7 §§ 301-09)

Person Reporting (Last name, first, middle initial) Wright, Susan W.	Court or Organization Eastern + Western Districts of Arkansas	Date of Report 9-22-89
Title	Date of Entry/Nomination/Termination (only if initial or final report) 9-21-87	Reporting Period (Calendar year, or inclusive dates) 1-1-88 through 9-1-89
Home or office address 1409 N. Hughes Little Rock, AR 72207		

IMPORTANT NOTES: *Please read the instructions accompanying this form. The report should include information pertaining to your spouse and dependent children, if any. Attach additional sheets if needed, identifying each attachment by showing your name, the date of the report, and the section(s) being completed.* **Complete all sections, checking the NONE box for each section where you have no reportable information.** *Compare and reconcile this report with last year's and list items in the same order as last year. Type or print clearly. Sign on last page*

I. POSITIONS. (Reporting individual only; see pp. 15-17 of Instructions.)

☐ NONE (No reportable positions)

POSITION	NAME OF ORGANIZATION/ENTITY
Professor of Law	University of Arkansas at Little Rock
Trustee	Robin E. Wright Trust

II. AGREEMENTS. (Reporting individual only; see p. 17 of Instructions.)

☐ NONE (No reportable agreements)

DATE	PARTIES AND ~~TERMS~~
1989	University of Arkansas at Little Rock. Terminable [illegible] 9-month salary contract for 1989 [illegible]
1988	West Publishing Company. Contract to [illegible] Land Use in a Nutshell (3rd ed) Royalties [illegible]

III. NON-INVESTMENT INCOME. (Partial disclosure for spouse; see pp. 18-20 of Instructions.)

☐ NONE (No reportable non-investment income)

	DATE (Honoraria only)	SOURCE AND TYPE	GROSS INCOME (yours, not spouse's)
1		University of Arkansas at Little Rock [illegible]	$ [illegible]
2		West Publishing Company (royalties)	$ [illegible]
3		Part time law practice (S)	$
4			$
5			$

FINANCIAL DISCLOSURE REPORT (cont'd)

Name of Person Reporting: Wright, Susan W.

Date of Report: 9-22-89

IV. REIMBURSEMENTS and GIFTS--transportation, lodging, food, entertainment.

(Includes those to spouse and dependent children; see pp. 20-22 of Instructions.)

SOURCE DESCRIPTION

☑ NONE (No such reportable reimbursements or gifts)

1
2
3
4
5
6
7
8

V. OTHER GIFTS.

(Includes those to spouse and dependent children; see pp. 20-22 of Instructions.)

SOURCE	DESCRIPTION	VALUE
☑ NONE (No such reportable gifts)		
1		$
2		$
3		$
4		$

VI. LIABILITIES.

(Includes those of spouse and dependent children; see pp. 22-24 of Instructions.)

CREDITOR	DESCRIPTION	VALUE CODE*
☐ NONE (No reportable liabilities)		
1 Superior Federal S+L	Condominium mortgage –	M
2		
3		
4		
5		
6		

* VALUE CODES: [illegible]

P. 1 of VII

FINANCIAL DISCLOSURE REPORT (cont'd)

Name of Person Reporting: Wright, Susan W.

Date of Report: 9-22-89

VII. INVESTMENTS and TRUSTS--income, value, transactions. (Includes those of spouse; partial disclosure for dependent children; see pp. 24-35 of Instructions.)

A. Description of Assets (including trust assets)	B. Income during period		C. Gross value at end of period		D. Transactions during period (Reporting individual and spouse)				
						If not exempt from disclosure			
Place "(X)" after each asset exempt from prior disclosure.	Amt. Code[1] (A-H)	Type (e.g. div.)	Value Code[2] (J-P)	Value Method Code[3] (Q-W)	Type (e.g. sold)	Date: Month-Day	Value Code[2] (J-P)	Gain Code[1] (A-H)	Identity of buyer/seller (if private transaction)
☐ NONE (No reportable income, assets, or transactions)									
1 P-B Nat'l Mun Fund	A	div	K	T					
2 P-B Money Mart Assets	A	div	J	T					
3 Keystone Precious Metals Hlds	A	div	K	T					
4 Imperial S+L 0 cc 10-11-95 (IRA)	A	div	K	T					
5 P-B Equity Fund (IRA)	B	div	L	T					
6 P-B Growth Opp Fund (IRA)	A	div	K	T					
7 P-B Moneymart Assets (IRA)	A	div	J	T					
8 Commercial Bankshares (Texarkana) Cumulative Preferred Stock	See	VIII	M	T					
9 Commercial Nat'l Bank, Texarkana C.D.'s		"	N	T					
10 Union National Bank, Little Rock C.D.'s		"	M	T					
11 Commercial Nat'l Bank Texarkana Checking + Savings Accts		"	L	T					
12 Union National Bank, Little Rock Checking + Savings Accts	B	int	L	T					
13 TIAA-CREF § 403(b) [illegible]			O	T					
14 Union National Bank, Little Rock Checking (DC)	B	int	K	T					
15 Commercial Nat'l Bank, Little Rock CD (DC)	A	int	K	T					
16 U.S. Treasury Strip 0 cc 11-15-01 (DC)	A	div	K	T					
17 Blackstone Target Term Trust (DC)	B	div	J	T					
18 Chicago, Ill. SFM 0 cc [illegible] (DC)	A	div	K	T					
19 P-B Moneymart Fund (DC)	B	div	L	T					
20 [illegible] Series II [illegible] (DC)	B	div	[illegible]	T					

1 Income/Gain Codes:	A = exempt ($0 to $100)	B = $101 to $1,000	C = $1,001 to $2,500	D = $2,501 to $5,000
	E = $5,001 to $15,000	F = $15,001 to $50,000	G = $50,001 to $100,000	H = over $100,000
2 Value Codes:	J = exempt ($0 to $1,000)	K = $1,001 to $5,000	L = $5,001 to $15,000	M = $15,001 to $50,000
	N = $50,001 to $100,000	O = $100,001 to $250,000	P = over $250,000	
3 Value Method Codes:	Q = Appraisal	R = Cost (real estate only)	S = Assessed value	T = Cash/market
	U = Book value	V = Other	W = Estimated	

· **FINANCIAL DISCLOSURE REPORT** (cont'd)

Name of Person Reporting: Wright, Susan W

Date of Report: 9-22-89

VII. INVESTMENTS and TRUSTS--Income, value, transactions. (Includes those of spouse; partial disclosure for dependent children; see pp. 24-35 of Instructions.)

A. Description of Assets (including trust assets)	B. Income during period		C. Gross value at end of period		D. Transactions during period (Reporting individual and spouse)				
						If not exempt from disclosure			
Place "(X)" after each asset exempt from prior disclosure.	Amt. Code[1] (A-H)	Type (e.g., div.)	Value Code[2] (J-P)	Value Method Code[3] (Q-W)	Type (e.g., sold)	Date: Month-Day	Value Code[2] (J-P)	Gain Code[1] (A-H)	Identity of buyer/seller (if private transaction)
☐ NONE (No reportable income, assets, or transactions)									
1 Tyson Foods common stock (DC)	A	div	K	T					
2 C D Columbia Savings occ 9-1-95 (DC)	A	div	K	T					
3 C.D Columbia Savings ccc 11-23-95 (DC)	A	div	K	T					
4 P-B Equity Income Fund (S)	A	div	K	T					
5 P-B Equity Fund (S)	B	div	M	T					
6 P-B Growth Opp Fund (S)	A	div	L	T					
7 P-B Nat'l Municipal Bond Fund (S)	B	div	L	T					
8 Polaris Aircraft Inc Fund III (S)	C	div	M	U					
9 P-B Energy Inc. Fund O 23 (S)	B	div	K	U					
10 P-B Energy Inc Fund P 22 (S)	B	div	K	U					
11 Ark St. Univ Rev. Cons. Bldg. Sys 8.00% 11-01-2000 (S)	B	div	L	T					
12 Jonesboro AR Res Hsg. 7.40 9 1 2001 (S)	B	div	K	T					
13 Prince Geo Co Md Hsg 6.0 5 1 97 (S)	B	div	M	T					
14 P-B Moneymart Assets (S)	A	div	K	T					
15 American SW Series 66 F 9.75 6-1-18 (S) (IRA)	A	div	J	T					
16 P-B Equity Income Fund (S) (IRA)	B	div	M	T					
17 P B Moneymart Assets (S) (IRA)	A	div	J	T					
18 C D Columbia S+L ccc 11-23-95 (S) (IRA)	A	div	K	T					
19 P-B Energy Income P 25 (S) (IRA)	B	div	K	U					
20 Union Nat'l Bank Little Rock Checking + Savings Acct (S)	B	int	L	T					

1 Income/Gain Codes:	A = exempt ($0 to $100)	B = $101 to $1,000	C = $1,001 to $2,500	D = $2,501 to $5,000
	E = $5,001 to $15,000	F = $15,001 to $50,000	G = $50,001 to $100,000	H = over $100,000
2 Value Codes:	J = exempt ($0 to $1,000)	K = $1,001 to $5,000	L = $5,001 to $15,000	M = $15,001 to $50,000
	N = $50,001 to $100,000	O = $100,001 to $250,000	P = over $250,000	
3 Value Method Codes:	Q = Appraisal	R = Cost (real estate only)	S = Assessed value	T = Cash/market
	U = Book value	V = Other	W = Estimated	

FINANCIAL DISCLOSURE REPORT (cont'd)

Name of Person Reporting	Date of Report
Wright, Susan W.	9-22-93

VII. INVESTMENTS and TRUSTS--income, value, transactions. (Includes those of spouse; partial disclosure for dependent children; see pp. 24-35 of Instructions.)

A. Description of Assets (including trust assets)	B. Income during period		C. Gross value at end of period		D. Transactions during period (Reporting individual and spouse)				
						If not exempt from disclosure			
Place "(X)" after each asset exempt from prior disclosure.	Amt. Code[1] (A-H)	Type (e.g., div.)	Value Code[2] (J-P)	Value Method Code[3] (Q-W)	Type (e.g., sold)	Date: Month-Day	Value Code[2] (J-P)	Gain Code[1] (A-H)	Identity of buyer/seller (if private transaction)
☐ NONE (No reportable income, assets, or transactions)									
1 Condominium (S)	B	rent	M	R					
2 1/4 interest in 177.3 acres Henderson Co, Texas (S)			L	W					
3 Severed, non-producing mineral interests (S)			B	W					
4 1/2 remainder interest in Lewisville AR (S)	B	rent	M	W					
5 TIAA-CREF §403(b) retirement contract (S)			P	T					
6 P-B Incomevertible Plus Fund (Estate of Alma S Wright) (S)	B	div	M	T					
7 P-B High Yield Fund (Estate of Alma S Wright) (S)	B	div.	M	T					
8 P B Moneymart Assets (Estate of Alma S Wright) (S)	B	div	L	T					
9 Monsanto Common Stock (Estate of Alma S Wright) (S)	B	div	L	T					
10 Northwest Ark. Bank Common stock (Fayetteville, AR) (S)	A	div.	K	T					
11									
12									
13									
14									
15									
16									
17									
18									
19									
20									

1 Income/Gain Codes:	A = exempt ($0 to $100) E = $5,001 to $15,000	B = $101 to $1,000 F = $15,001 to $50,000	C = $1,001 to $2,500 G = $50,001 to $100,000	D = $2,501 to $5,000 H = over $100,000
2 Value Codes:	J = exempt ($0 to $1,000) N = $50,001 to $100,000	K = $1,001 to $5,000 O = $100,001 to $250,000	L = $5,001 to $15,000 P = over $250,000	M = $15,001 to $50,000
3 Value Method Codes:	Q = Appraisal U = Book value	R = Cost (real estate only) V = Other	S = Assessed value W = Estimated	T = Cash/market

FINANCIAL DISCLOSURE REPORT (cont'd)

Name of Person Reporting	Date of Report
Wright, Susan W.	9-22-89

VIII. ADDITIONAL INFORMATION or EXPLANATIONS. (Indicate section of Report.)

☐ **Check to affirm that differences in investments from those reported in prior year are exempt from disclosure.**

Items 8, 9, 10 + 11 on page 1 of part III are assets held in the joint name of my mother and me or of my mother, my sister, and me. My mother receives all the income from these assets.

Assets marked "DC" are held by the Robin E. Wright trust. My husband and I are trustees.

The condominium (Item 1 on page 3 of Part VII) was purchased by my spouse for $42,150 in 1981.

The real property described in items 2, 3 + 4 of page 3 of Part III is difficult to appraise. Severed, non producing mineral interests are not taxed in Arkansas and are difficult to evaluate. From time to time some of these properties have been leased for minerals or for timber.

IX. CERTIFICATION.

In compliance with the provisions of 28 U.S.C. § 455 and of Advisory Opinion No. 57 of the Advisory Committee on Judicial Activities, and to the best of my knowledge at the time after reasonable inquiry, I did not perform any adjudicatory function in any litigation during the period covered by this report in which I, my spouse, or my minor or dependent children had a financial interest, as defined in Canon 3C(3)(c), in the outcome of such litigation.

I certify that all information given above (including information pertaining to my spouse and minor or dependent children, if any) is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure.

Signature Susan W. Wright Date 9-22-89

NOTE: ANY INDIVIDUAL WHO KNOWINGLY AND WILFULLY FALSIFIES OR FAILS TO FILE THIS REPORT MAY BE SUBJECT TO CIVIL AND CRIMINAL SANCTIONS (28 U.S.C.A. APP. I, § 304, AND 18 U.S.C. § 1001.)

FILING INSTRUCTIONS:

1. Mail signed original and 3 additional copies to:

   Judicial Ethics Committee
   Administrative Office of the
   United States Courts
   Washington, DC 20544

2. Deliver one copy to the Clerk of the Court on which you sit or serve. (Judicial employees not associated with a specific court, such as employees of the Administrative Office and the Federal Judicial Center, need not file a copy with any court.)

AMERICAN BAR ASSOCIATION
Standing Committee on Federal Judiciary
1800 M Street, NW
Washington, DC 20036
(202) 331-2210

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American Bar Association
1800 M Street, NW
Washington, DC 20036
(202) 331-2210
ABA/NET ABA 461

CONFIDENTIAL

September 29, 1989

Hon. Joseph R. Biden, Jr.
Chairman, Committee on the Judiciary
United States Senate
SD 224
Washington, D.C. 20510-0802

RE: SUSAN WEBBER WRIGHT
United States District Court for the
Eastern/Western District of Arkansas

Dear Senator Biden:

Thank you for affording this Committee an opportunity to express an opinion pertaining to the nomination of Professor Susan Webber Wright for appointment as Judge of the United States District Court for the Eastern/Western District of Arkansas.

Our Committee is unanimously of the opinion that Professor Wright is Qualified for this appointment.

A copy of this letter has been sent to Professor Wright for her information.

Sincerely,

Ralph Lancaster

Ralph I. Lancaster, Jr.
Chairperson

RIL/sm

cc All Committee Members
Professor Susan Webber Wright
Barbara Drake, Esq.

CONFIRMATION HEARING ON VAUGHN R. WALKER

THURSDAY, NOVEMBER 9, 1989

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The committee met, pursuant to notice, at 9:35 a.m., in Room SD-226, Dirksen Senate Office Building, Hon. Howard M. Metzenbaum presiding.

Also present: Senators Heflin, Thurmond, Simpson, Specter and Humphrey.

OPENING STATEMENT OF SENATOR METZENBAUM

Senator METZENBAUM. The hearing will come to order. This morning the Judiciary Committee holds a hearing on the nomination of Vaughn R. Walker to be a Federal District Judge for the Northern District of California. This is the second time Mr. Walker has appeared before the Senate Judiciary Committee. He was first nominated for the Federal bench by President Reagan in December of 1987. The committee held a hearing on Mr. Walker's nomination in June of 1988, but declined to act on his nomination last year largely due to a controversy over his membership in the Olympic Club.

Mr. Walker resigned from the club earlier this year. In February he was renominated by President Bush. The committee's concern with nominees that belong to discriminatory clubs is not new. Since 1979, we have recognized that a nominee's membership in a discriminatory club is highly relevant to assessing his or her commitment to fairness and equal justice.

Ten years ago when the committee first began to grapple seriously with this issue, Professor Charles Fried, who later became Solicitor General under President Reagan, wrote that membership in a discriminatory club quote "bespeaks of posture, character and a set of priorities which do not accord with the morality to which federal judges should aspire."

Professor Fried added that quote: "The Committee has the right to insist that a nominee display some personal devotion to the principles of fairness and equal dignity which lie behind the law."

Federal judgeships are lifetime positions, which frequently require the appointee to render judgments about discrimination. Membership in a discriminatory club raises serious question about a nominee's sensitivity to the various and subtle ways in which racial or gender discrimination is manifest. Such membership also threatens to undermine the public's confidence in the judiciary. A female or an attorney in a sex discrimination case would have every right to doubt the impartiality of a decision rendered by a judge who finds nothing wrong with belonging to a club which treats women unequally.

The Olympic Club is not a small, intimate group. It has 4,700 members and is an integral part of the business and professional life of the San Francisco community. Nevertheless until 1967 the clubs bylaws restricted membership to "only white male citizens of the United States of good moral character, integrity and reputation." The racial ban was dropped in 1968. But no black members were admitted until early 1988 after the city of San Francisco had filed an anti-discriminatory suit against the club. Women continued to be barred from full membership status within the club. And the city's ongoing suit against the club seeks to remedy that discrimination.

The commentary to canon two of the American Bar Association's Code of Judicial Conduct states that "It is inappropriate for a judge to hold membership in any organization that practices invidious discrimination on the basis of race, sex, religion or national origin." That language has been in effect since 1984. Nominees who resign from such clubs in order to facilitate swift confirmation do little to dispel the doubts which are raised by their membership. On the other hand, a nominee who remains in a discriminatory club, but takes a leadership role in trying to change its policies may be able to overcome the negative presumption raised by his or her membership.

I am frank to say that this Senator would look favorably upon a nominee who prior to being nominated took visible and active steps to change a discriminatory club's policies. Earlier this year I chaired a hearing on the nomination of Judge Ferdinand Fernandez for the Ninth Circuit Court of Appeals. Until 1980, Judge Fernandez belonged to the University Club which did not admit women members. But Judge Fernandez showed considerable sensitivity to the issues raised by his club membership. Long before he was a candidate for the State bench he took a leadership role in trying to change the club's policies. In 1980 when he became a State judge he resigned from the club even though the ABA had not yet adopted its policies on discriminatory clubs.

This hearing today will concern itself with whether the nominee before us has shown similar sensitivity to the improprieties associated with its club membership as we grasp the damage caused by excluding women or minorities from a club closely entwined with the commercial life of the city. Did he initiate efforts to alter the club's policies prior to being a candidate for the Federal bench? Do his actions and statements forthrightly confront the damage and inequity caused by discriminatory clubs or do they minimize the harm caused? Has he been candid with the committee about the club's practices and his tenure within it?

Frankly, I am concerned whether or not Mr. Walker has been too slow to grasp the implications of his membership in the Olympic Club. I am also concerned that the chief impetus for bringing the discriminatory issue to a head within the club has been the lawsuit filed by the city rather than action by Mr. Walker or other club members. Mr. Walker says he has supported efforts to change the Olympic Club's discriminatory policies, but the facts with respect to that matter will be discussed here. I still have a question about whether that support and Mr. Walker's decision to resign were motivated by genuine conviction and concern that the club's policies were wrong, or by a desire to appease the committee's concerns about the impropriety of his membership.

This hearing should shed light on these questions. I am very pleased that Senator Simpson is here with us this morning. Senator Simpson, do you have an opening statement?

OPENING STATEMENT OF SENATOR SIMPSON

Senator SIMPSON. Mr. Chairman, I think that Senator Thurmond is here, and if so—oh, well, thank you, Mr. Chairman. You might imagine that the chairman and I have a differing view on this. This is the second hearing on this. We held a full hearing on this a year and a half ago, the whole works. When the committee first fully examined the issues involved in this nomination, the printed hearing record is more than 350 pages. The hearing consumed 5 hours, and so here we are again. But we have a new tack now. Instead of the Gay Olympics, now it is clubs. If they would just admit in this committee that they just do not like people with a conservative beat, it would make our work so much easier. Then we could quit diddling with all this other stuff.

I hope we will move more swiftly on this nomination following the hearing since we did not move too well for 1½ years. There is not a single question about this nominee's education or his educational and legal experience qualifying him for the bench. In fact, his experience as a law clerk in both the State and the Federal court as well as his extensive litigation experience is the finest kind of preparation for the trial bench. I was especially impressed with Mr. Walker's activities in the San Francisco Lawyers' Club as described by Mr. Margolin at the hearing last year, particularly Mr. Walker's efforts to "scour the countryside for people in the minority area, for women, for people with different lifestyles, who may wish to come and join the board" of that club.

Mr. Margolin is a former ACLU attorney, warmly endorsing Mr. Walker. I was disturbed, as I believe many of my colleagues on the committee were, at the suggestion that Mr. Walker's representation of a particular client should work against him in this confirmation process. As a member of the California bar wrote to this committee, it would be a disaster "to pick out a former client of a nominee and try to transfer the qualities of the client to the lawyer." That is an absurd situation. That is really the refuge of the scoundrel. Most of us lawyers think of the clients we have had—boy, I could give you my list, guys that chewed people's ears off after a rodeo contest and so on. They were not really the sweetest guys on Earth, but I never chewed anybody's ear off. So I did not get blamed for that when I represented them. It is absurd, absolutely absurd. Not that the qualities of U.S. Olympic Committee are in question, but the idea that we would judge a nominee by those he represents is absolutely reprehensible, and it is absurd, and it has never happened before.

Much of what is being made of this is that you are a member of a club which did not afford women full voting membership. The issue of club membership can be carried to extremes. I have found in this committee it is carried to extremes because, Mr. Chairman, you cited exactly what I will cite. Remember that we are concerned with the word "invidious," invidious discrimination. That is discrimination by the dictionary definition "tending to rouse ill will or animosity, offensive discrimination." That is what invidious discrimination is, and yet we see challenges in this committee to organizations ranging from the Elks Club to the Masons. Can you believe that? It is absolutely stupid, and there is no other word but stupid—I say it in that crisp way.

The Elks Lodge, we had that come up in here, and then the Masons. And there are 18 of us out on the floor, Democrat and Republican alike, who are members of the Masons, Sam Nunn, John Glenn, Strom Thurmond, and many more. Now that has to come from some dull-witted staff person. That cannot come from a Senator. No one would believe that. There is no other possibility where that could come from. If someone 28 years old does not know what the Masons are, they should go read up on what the Masons are. They are not exactly involved in things that are against brotherhood, love of man, love of family, love of wife, and love of children. That is what the Masons are.

So this kind of thing makes us look like boobs, and it should. And I believe it is fair to point out that when Mr. Walker first appeared before this committee, he indicated he was trying to change the discriminatory practices of the Olympic Club from within, and at that time he had some hope the club was moving toward admitting women to full membership, and he testified that if he decided his efforts to change would be futile, he would resign, and he did. And I believe the fact is there was another vote on the issue by the members of the club. That vote indicated a majority still opposed full voting rights for women. Remember women were able to use every bit of the club in all of its aspects. They were just not involved in voting.

Shortly after receiving the results of that poll, Mr. Walker resigned. That participation of women was not good enough for him, and so he resigned. That is what he told the committee he would do a year and a half ago, and I believe that should settle that matter. And the other issue is pro bono work or lack of it. I note you are a member of the California Law Revision Commission and work primarily on probate code reform. I had a former partner who serves on the ABA uniform laws committee. He has spent thousands of hours over the years rewriting the Uniform Probate Act and Wyoming's probate code. I call that pro bono work. It may not be the same kind as criminal defense work, but he was not a criminal lawyer. But he put hours of his time in "for nothing" except the benefit of his profession and those it serves.

So those are some things that I have to comment on, and then there is one which I thought was really remarkable that some have suggested that Mr. Walker represented his clients with "excessive zeal." In my 18 years of law practice I never heard a client complain of an attorney's excessive zeal. I have heard a few complain about the lack of zeal on the part of their lawyer. Attorneys are retained to vigorously represent their clients' interests. That is what they are hired for. And so I welcome you to the committee and one further comment on one soaring hypocrisy. It almost numbs the sense of fairness that should take place here. A candidate on the national ticket of Senator Metzenbaum's party, one of the most respected men I know, one who I admire above all others in this place, resigned from a club that supposedly did this, not in any invidious way, and after the campaign was concluded he rejoined those clubs. I do not hear anything about that in here.

I think that is worth talking about because it makes the whole thing so absurd. And why did he join those clubs again? Well, probably because he wanted to, and his friends were there. It did not have a damn thing to do with whether he was a racist, a bigot, or evil, or sexist, or mean, or ugly. It was probably because that was where he and his wife enjoyed people and liked being with them for about 30 or 40 years, and he was a man who busted a gut to change it and did everything he could to change it, and it did not happen. But of course it will.

I guess you judge the worth of a person by the size of the things that bother him or her, and I think before we go further in this one we ought to make inquiry back and ask these other things for the sole purpose, not for hurting this man at all because I would not hurt him in any way, but for the purpose of turning the spotlight of absurdity into this kind of thing. It is mindless mumbling. It is embarrassing. It is immature. It brings ridicule upon us. This is a staff generated witch hunt, and it is silly. Let them get the mote out of their own eye, go make inquiry somewhere on back down the road, and as for the lady that rang the bell on Mr. Walker, please know her husband still belongs to a private club that admits no blacks and no women. And that is the kind of guff we have to slog along in this place.

That is Mrs. Renne's husband, and to this day, November 1989, he remains a member of a San Francisco golf club which has no blacks or women members. Come on. Yuk. I quit.

[Laughter.]

Senator METZENBAUM. It was a wonderful speech that my friend and colleague made. As a matter of fact, as I sat here, I remembered how Senator Thurmond had engaged in some filibusters over the years. I remember I have been engaged in some filibusters over the years, and I thought, Mr. Walker, we were never going to get to your nomination while Alan made that great speech.

Senator SIMPSON. You could see I had it on my mind!

Senator METZENBAUM. But having made that great speech and with reference to the matter of issue of conservatives or nonconservative appointees, and I want to point out to my friend that this same committee confirmed the nominations of Justice Scalia, Justice Kennedy, Justice O'Connor, and a number of others to Circuit Court of Appeals as well as District Courts. I would also like to point out to him that this hearing does not have anything at all to do with the Elks or the Masons, and it is not an issue. And I do not think it is a continued issue in the committee.

I think at one point somebody mentioned the subject, but it has not been an issue, and it has been put aside. Now with respect to Mr. Walker's using excessive zeal to represent his client, if we were going to hold that against him, we might have to hold that against some of us in the United States Senate as well so we will not do that. And with respect to the matter of women having all of the same rights as men in this club, I think that is not quite in accord with the facts because I think they are restricted with respect to the athletic facilities as I understand it, or I think they can be in the public rooms.

But having said that, I think we ought to continue forward, and I look forward to comments of the distinguished ranking member of the Judiciary Committee, Senator Thurmond.

OPENING STATEMENT OF SENATOR THURMOND

Senator THURMOND. Thank you, Mr. Chairman. Now Mr. Chairman, today we begin the second confirmation hearing on the nomination of Vaughn Walker of California to be a U.S. district court judge for the northern district of California. Mr. Chairman, I would briefly like to recount the history of this nomination. Mr. Walker's nomination has been pending before the Judiciary Committee for almost 2 years, a period of time that I find totally unacceptable.

He was first nominated by President Reagan on December 18, 1989. His first confirmation hearing was held on June 13, 1988, generating a transcript of almost 200 pages. At the hearing. Mr. Walker further responded to numerous questions about a wide range of matters. Additionally, several witnesses appeared who provided detailed information about the issues related to this nomination. We heard testimony regarding his membership in the Olympic Club, his representation of the International Olympic Committee in the so-called "gay Olympics" case, and certain other issues. Mr. Chairman, the first hearing provided more than sufficient opportunity to fully discuss Mr. Walker and the issues related to his nomination. After that hearing, I urged the committee to give Mr. Walker a vote. It was only appropriate to put the nomination before the committee.

However, Mr. Walker did not get a vote in the committee in 1988 prior to Senate adjournment even though he was originally nominated in December 1987. After the Judiciary Committee failed to consider the nomination in 1988, Mr. Walker was renominated by President Bush on February 28, 1989. No action on this nomination was taken until 8 months later when a hearing was scheduled for October 25. As a result of the earthquake in San Francisco, the hearing was postponed until today. Mr. Chairman, I do not believe we should spend an inordinate amount of time reviewing issues considered in detail at last year's hearing.

However, briefly, I want to mention some of the issues related to this nomination. First, Mr. Walker's membership in the Olympic Club has been raised. He made a strong effort to change this club's membership policy. When changes were not made to provide full membership status for women, he chose to terminate his membership. Mr. Walker represented the International Olympic Committee in the so-called gay olympics case. He was a lawyer who was paid to enthusiastically represent his client and should not be criticized for ethically doing what he is required to do as an attorney.

Mr. Chairman, the San Francisco Bar Association being aware of these factors recently found Mr. Walker well qualified for a position on the U.S. District Court. In summary, Mr. Chairman, after today's hearing it is time to give this nominee a vote. We have delayed long enough. The majority leader has announced his intention to recess on or before November 22, 1989, just 2 weeks from now. This nomination has been pending before the committee for almost 2 years. Mr. Walker is entitled to and should get a vote in the full Senate before adjournment. This is only fair.

In addition, the Northern District of California is facing a large docket backlog, as there are currently two vacancies with an additional judge failing to hear cases due to his indictment. We should act on this nomination so that those who choose to resolve their disputes in the Federal judicial system in the Northern District of California will have the opportunity to do so. Mr. Chairman, any member of this committee who wants to vote against this nomination is entitled to do so. But Mr. Walker deserves a vote either up or down, and without further delay. It is unconscionable to treat any nominee unfairly, and that appears to be what is happening to Mr. Walker.

Mr. Walker, you have been gracious in making yourself available throughout this long process, and I thank you for your patience, and I look forward to your testimony here today. Thank you, Mr. Chairman.

Senator METZENBAUM. I would just like to point out to my distinguished colleague that this hearing was to have been held 2 weeks earlier, but by reason of the earthquake it was necessary that we postpone it.

Senator HUMPHREY. What about the other 2 years?

Senator METZENBAUM. Well, it has been up previously, and it was considered in the past, and there were obviously some continuing questions, and so it was not acted upon. Senator Specter, do you have a statement?

Senator SPECTER. I am just delighted to be here and am prepared to listen. Thank you.

Senator METZENBAUM. Senator Humphrey, do you have a statement?

OPENING STATEMENT OF SENATOR HUMPHREY

Senator HUMPHREY. Mr. Chairman, the committee's handling of this nomination has been grossly unfair and even unethical. Mr. Walker is a highly respected litigation partner in one of San Francisco's most prominent law firms. He was first nominated for this district court vacancy almost 2 years ago, 2 years ago, not 2 weeks ago, 2 years ago in December of 1987. His career has been placed in limbo for these 2 years while this committee has shamelessly stonewalled his nomination.

There have already been 5 hours of hearing on the nomination. The committee has heard from every possible source. Members of this committee have had more than ample opportunity to decide how to vote, up or down, on the nomination. And it is time now to end this prolonged inquisition and vote the nominee up or down. In my view, the grounds on which certain elements have based what can only be called a vendetta against Mr. Walker are very flimsy indeed.

Mr. Chairman, I am going to put the balance of my remarks in the record.

Senator METZENBAUM. Without objection, they will be included.

Senator HUMPHREY. And plead for fairness and decency and due regard for the man, his career, his family, his law firm. Really what is going on here is grossly unfair. It is just unethical. It is unfair. It is just dirty politics.

[The statement of Senator Humphrey follows:]

STATEMENT OF SENATOR GORDON J. HUMPHREY
HEARING ON NOMINATION OF MR. VAUGHN WALKER FOR THE U.S. DISTRICT COURT, NORTHERN DISTRICT OF CALIFORNIA

NOVEMBER 9, 1989

MR. CHAIRMAN, THE JUDICIARY COMMITTEE'S HANDLING OF THIS NOMINATION CAN ONLY BE DESCRIBED AS GROSSLY UNFAIR.

MR. VAUGHN WALKER, A HIGHLY-RESPECTED LITIGATION PARTNER IN ONE OF SAN FRANCISCO'S MOST PROMINENT LAW FIRMS, WAS FIRST NOMINATED FOR THIS DISTRICT COURT VACANCY ALMOST TWO YEARS AGO, IN DECEMBER OF 1987. WHEN FIRST NOMINATED, MR. WALKER WAS 43 YEARS OLD. HE IS NOW 45, AND WILL BE 46 IN FEBRUARY. MR. WALKER'S CAREER HAS BEEN PLACED IN LIMBO FOR THIS LENGTHY PERIOD, WHILE THIS COMMITTEE FIDDLES WITH HIS NOMINATION.

FIVE HOURS OF HEARINGS HAVE ALREADY BEEN HELD ON THIS NOMINEE, AND THE COMMITTEE HAS ALREADY HEARD ALL THE NECESSARY INFORMATION ON THE ISSUES RAISED BY MR. WALKER'S OPPONENTS. ALL MEMBERS OF THIS COMMITTEE HAVE HAD MORE THAN AMPLE OPPORTUNITY TO DECIDE HOW TO VOTE ON MR. WALKER. IT IS TIME TO CALL AN END TO THIS PROLONGED INQUISITION AND VOTE THE NOMINEE UP OR DOWN.

IT IS INSTRUCTIVE TO CONSIDER THE FLIMSY GROUNDS ON WHICH CERTAIN ELEMENTS HAVE BASED THEIR VENDETTA AGAINST MR. WALKER.

FIRST OF ALL, I SHOULD POINT OUT AN ISSUE THAT IS NOT INVOLVED HERE. I SEE NOTHING IN MR. WALKER'S RECORD OR BACKGROUND INDICATING THAT HE IS SOME KIND OF STAUNCH LEGAL CONSERVATIVE -- A FACTOR THAT HAS RESULTED IN STRONG OPPOSITION TO CERTAIN OTHER JUDICIAL NOMINEES IN RECENT YEARS. OF COURSE, I WOULD WELCOME MORE JUDICIAL NOMINEES WHO DO SHOW SIGNS OF STRONG CONSERVATIVE VALUES, BUT I AM NOT THE PRESIDENT. I AM SATISFIED THAT MR. WALKER IS A WELL-QUALIFIED PROFESSIONAL WITH SOLID INTEGRITY WHO WILL BE FAITHFUL TO THE CONSTITUTION AS A FEDERAL JUDGE. ON THAT BASIS, HE SHOULD HAVE BEEN CONFIRMED 18 MONTHS AGO.

BUT MR. WALKER HAS FALLEN VICTIM TO TWO DIFFERENT LITMUS TESTS WHICH ARE NOW APPLIED BY THE LEFT TO UNDERMINE THE PRESIDENT'S POWER TO APPOINT FEDERAL JUDGES.

FIRST, HE HAS INVOKED THE ANIMOSITY OF THE SAN FRANCISCO AREA'S HOMOSEXUAL COMMUNITY -- A GROUP WHICH CARRIES CONSIDERABLE WEIGHT IN THE DEMOCRATIC PARTY. WHAT DID MR. WALKER DO TO EARN THIS FANATICAL OPPOSITION? WELL, HE HAD THE AUDACITY TO REPRESENT THE U.S. OLYMPIC COMMITTEE IN A LAWSUIT CONCERNING MISAPPROPRIATION OF THE OLYMPIC TRADEMARK BY A GROUP THAT RUNS THE GAY OLYMPICS. WORSE, HE WORKED VIGOROUSLY FOR HIS CLIENT IN THAT CASE AND ULTIMATELY HELPED TO VINDICATE THE U.S. OLYMPIC COMMITTEE'S TRADEMARK RIGHTS.

THIS IS ONE OF THE MOST IRRESPONSIBLE AND VINDICTIVE GROUNDS FOR OPPOSING A JUDICIAL NOMINEE I HAVE EVER SEEN. OF COURSE, MR. WALKER'S PERSECUTORS HAVE TRIED TO EMBELLISH THE RECORD BY CLAIMING THAT HE WENT BEYOND VIGOROUS ADVOCACY AND DEMONSTRATED "INSENSITIVITY" IN HIS HANDLING OF THE CASE. THIS IS A BOGUS CHARGE. THE ONLY WAY MR. WALKER COULD HAVE SATISFIED THE STANDARDS OF "SENSITIVITY" DEMANDED BY HIS OPPONENTS WOULD HAVE BEEN TO SUBORDINATE THE INTERESTS OF HIS CLIENTS TO THE UNREASONABLE DEMANDS OF THE VERY PARTIES THEY WERE SUING. MR. WALKER'S OPPONENTS MIGHT CALL THAT SENSITIVITY, BUT PERSONS WHO UNDERSTAND THE HARD REALITIES OF LITIGATION WOULD CALL IT MALPRACTICE.

THE CHARGES BASED ON THE U.S. OLYMPIC COMMITTEE CASE REPRESENT NOTHING MORE THAN THE BITTERNESS AND RESENTMENT OF THOSE WHO WERE ON THE LOSING SIDE IN THAT DISPUTE. IT WOULD BE COMPLETELY IRRESPONSIBLE TO OPPOSE MR. WALKER'S CONFIRMATION BASED ON SUCH CONSIDERATIONS.

THE OTHER CHARGE AGAINST MR. WALKER CONCERNS HIS MEMBERSHIP IN SAN FRANCISCO'S OLYMPIC CLUB -- THE SAME PRIVATE CLUB THAT SUPREME COURT JUSTICE KENNEDY BELONGED TO FOR MANY YEARS. THIS CHARGE HAS NO MERIT WHATSOEVER.

THE OLYMPIC CLUB IS CRITICIZED BECAUSE IT DOES NOT EXTEND FULL VOTING MEMBERSHIPS TO WOMEN. MR. WALKER IS

CONDEMNED BECAUSE HE DID NOT RESIGN FROM THE CLUB IN PROTEST UNTIL HE CAME UNDER PRESSURE TO DO SO AFTER HIS NOMINATION.

THIS COMMITTEE'S OBSESSION WITH THE PURITY OF THE CLUBS TO WHICH NOMINEES BELONG, OR ONCE BELONGED, HAS GOTTEN OUT OF HAND. IT WOULD BE ONE THING IF A NOMINEE ENDORSED OR SUPPORTED ILLEGAL DISCRIMINATION BY A CLUB. THAT WOULD BE FAIR GROUNDS FOR OBJECTION. BUT NOTHING OF THE SORT HAS OCCURRED HERE. IN FACT, THE RECORD SHOWS THAT MR. WALKER IN FACT SUPPORTED EFFORTS TO ADMIT WOMEN TO FULL MEMBERSHIP IN THE OLYMPIC CLUB. HE WAS AGAINST THE MALE MEMBERSHIP POLICY, NOT FOR IT. IN SHORT, MR. WALKER'S PAST MEMBERSHIP IN THE OLYMPIC CLUB PROVIDES NO LEGITIMATE BASIS FOR OPPOSING HIS NOMINATION.

THE JUDICIAL CONFIRMATION PROCESS SHOULD FOCUS ON THE CHARACTER AND QUALIFICATIONS OF THE NOMINEE. INSTEAD, THIS COMMITTEE NOW FINDS ITSELF CONDUCTING DETAILED INVESTIGATIONS AND AUDITS OF THE POLICIES AND PRACTICES OF EVERY CLUB TO WHICH THE NOMINEES ONCE BELONGED. IT HAS LITERALLY REACHED THE POINT WHERE NOMINEES FEEL COMPELLED TO DISCLOSE AND DEFEND THEIR MEMBERSHIPS IN THE BOY SCOUTS AND THE KNIGHTS OF COLUMBUS. I THINK THE COMMITTEE'S PREOCCUPATION WITH THESE CLUB ISSUES SMACKS OF GUILT BY ASSOCIATION AND IS TOTALLY UNFAIR TO THE NOMINEES.

I BELIEVE MR. WALKER IS A WELL-QUALIFIED, FAIR-MINDED MAN, AND I SUPPORT HIS CONFIRMATION FOR THE U.S. DISTRICT COURT.

Senator METZENBAUM. Well, I am glad that my colleagues on the left--I guess they all are on the left—are so enthused and so strong in their language, but we will just proceed forward and see if we cannot conduct this hearing, Mr. Walker, so that the committee will have an opportunity to act in connection with your nomination. We are very pleased that Senator Wilson is here with us and has been waiting patiently in order to present the nominee. And Senator Wilson, we will be happy to hear from you.

STATEMENT OF HON. PETE WILSON, A U.S. SENATOR FROM THE STATE OF CALIFORNIA

Senator WILSON. Thank you very much, Mr. Chairman. Mr. Chairman, in the interest of time, let me invite the attention of the members of this committee to my earlier introduction of Vaughn Walker. It is a matter of record, and it states far more fully than I will take the time to do so here that he is superbly equipped to serve as a Federal court judge—equipped by education, by intellect, by experience, by the kind of moral rigor and fairness that we should expect in the best of the judiciary.

The fact that he is not yet serving on the Federal bench as he deserves to arises from two allegations about him, both of which are wrong, both of which are unfair. One relates to what Senator Simpson described as excessive zeal. In short, he has been accused of being unethical in the way that he conducted himself as counsel in litigation, most notably during his representation of the U.S. Olympic Committee against the so-called "Gay Olympics" for their unauthorized use of the word "olympic." But that has been the subject of a 5 hour hearing through which I sat and that record is also before you.

The focus, the primary focus of today's hearing seems to be upon his membership in the Olympic Club, a club which harbors discriminatory bylaws. I am not going to get into fine points about which facilities of the club are available to women. What I think is far more pertinent is the actual record of Vaughn Walker in terms of the efforts that he has made to not simply address but change those discriminatory bylaws and practices of the Olympic Club.

It is alleged by his detractors that Mr. Walker's efforts in this regard have been stimulated by his anticipation of being nominated by President Bush, and I was pleased to hear you say, Mr. Chairman, that in your view fairness demanded that a candidate for the bench be viewed in terms of what his conduct had been in an effort to change discriminatory practices of some group or organization in which he had membership because of a genuine desire to seek that change and not simply in response to suddenly being thrust into the public spotlight. If that is, in fact, the standard that the committee employs, as I hope it will be, I do not think that there can be any doubt that it will find that Vaughn Walker long, long before he was considered for a nomination to the Federal bench or any bench was working against discrimination, not only within his own club, and with his own membership, but with respect to all clubs in that city in which he resides which were guilty of similar discriminatory practices.

It is interesting to recall that the committee's consideration of then-Judge Anthony Kennedy when he was nominated to serve on the Supreme Court involved inquiries not only into similar circumstances, but into his membership in this very same club. Judge Kennedy had been a member of the Olympic Club for many years while a sitting judge on the court of appeals for the ninth circuit. He had joined in 1962 when the club had an explicit policy against the admission of blacks, a policy that was changed in 1968, and as brought out in questioning by Senator Kennedy, Judge Kennedy did not try to change the club's policy against the membership of women until the summer of 1987. He resigned after he was being considered for nomination to the Supreme Court. Judge Kennedy did not dispute this characterization by Senator Kennedy.

Now I make these points certainly not to disparage the record of Judge Anthony Kennedy, whom I was more than proud to introduce to this committee, and whose nomination I urged upon the White House. The fact is that he has a fine record in that regard, but I must say that if you compare it with that of Vaughn Walker, I think that in fairness you would have to say that Mr. Walker has been the greater activist in the cause of removing discriminatory provisions. You have to measure that by effort, not success, just as you have to measure conduct on the part of a litigant by how he conducts himself, not whether he prevails with a judge or jury in court.

Judge Kennedy was quickly confirmed by the Senate. Vaughn Walker has been waiting for two years despite a record clearly indicating an active role opposing discrimination against women in the Olympic Club. Let me point out the following facts in support of that contention.

Mr. Walker belonged to the club not as a holder of public office but as a private citizen, and as very clearly spelled out in a letter to me from David Dawson, who was for the years 1975 through 1977 a director and officer of the club and served as the club's president in 1977, Mr. Walker has long been active in trying to open the club's membership to women. Mr. Dawson wrote to me of his recollection that during his time as a member of the board of directors, in the years 1975 through 1977, and as the club's president in 1977, Mr. Walker lobbied extensively for the inclusion of women in the club and has continued his advocacy since then.

Mr. Chairman, I ask that Mr. Dawson's letter to me be made a part of the record.

Senator METZENBAUM. Without objection, it will be included in the record.

[The letter from Mr. Dawson follows:]

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October 23, 1989

The Honorable Pete Wilson
Attention: Ira Goldman
SH-720 Senate Office Building
Washington, DC 20510

Dear Honorable Wilson:

This letter is written on behalf of Vaughn R. Walker who is a candidate for judgeship for the United States District Court for Northern California.

I first met Mr. Walker several years ago at the Olympic Club in San Francisco. Since that time he has become a good friend and colleague. I was a member of its Board of Directors of the Olympic Club from 1975 through 1977. In 1977 I was President of the Olympic Club. During my tenure I was contacted by Mr. Walker who commended the Board's action in changing its policy to allow members to entertain both male and female guests at noon time in the Club's main dining room at its downtown facility. Prior to that time women guests were not allowed in the main dining room for lunch. Since that time Mr. Walker has actively encouraged and attempted to persuade the Club's members that its discriminatory bylaws regarding membership should be changed to allow women full voting rights as a member of the Olympic Club.

(It should be noted that the Olympic Club has approximately 1,500-2,000 women members. This includes a women's golf section comprised of 800 members who enjoy their own locker room facilities. The social and golf memberships are purely derivative from the member's husband or father and are non-voting memberships.)

In 1987, the Olympic Club was sued by the City and County of San Francisco. This lawsuit alleges that the Olympic Club is in effect a business and thus under the California Unruh Act is prohibited from employing discriminating membership practices. In October of 1987 at a special meeting of the Olympic Club membership, a vote was held to determine whether the bylaws should be changed to allow women members. Mr. Walker took an active role along with many other Olympians in attempting to persuade the general membership of the Club to vote to change its bylaws to allow women members.

Unfortunately, the majority of the members elected not to change its existing bylaws. In late 1988 and January 1989, there were two other membership votes, one whether to enter settlement discussions with the City and the other whether to change the Club by-laws. Mr. Walker again supported both measures. Both measures, however, were defeated. Following these votes, Mr. Walker and I discussed the situation. He told me that he felt he could no longer remain a Club member in light of these votes. We reviewed a draft resignation letter which he later gave me to deliver to Club officials which I did.

Mr. Walker, until his resignation as a member earlier this year, continued to [illegible] to work within the Olympic Club to influence the general membership to effectuate a change of its policy regarding the exclusion of women as members. It is untrue that Mr. Walker did not genuinely work for and desire a change in the Club's membership policy.

If you need any further information or have any questions, I would be privileged to respond.

Very truly yours,

DAVID P. DAWSON

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Senator **Wilson**. The next point, Mr. Chairman, is that as the president of the San Francisco Lawyers' Club——

Senator **Metzenbaum**. Senator Wilson, would you be good enough to send that letter up to the chair at this moment in case I have any questions in connection with it?

Senator **Wilson**. Sure. Mr. Goldman has a copy of it. Thank you. As the president of the San Francisco Lawyers' Club, traditionally a small firm organization that is generally viewed as somewhat liberal, Mr. Walker appointed a committee to consider what position the lawyers' club should take on the lawsuit filed by the city of San Francisco against the Olympic Club for its alleged discrimination. After consideration by the Lawyers' Club board, Mr. Walker drafted a resolution that stated that discriminatory clubs, quote, "ill serve important interests of our community to equal opportunity."

That resolution urged members of the Lawyers' Club, quote, "to take appropriate steps to change the membership policies of such clubs." This action, I am compelled to underscore, this action was initiated before Mr. Walker was nominated for the Federal bench. And in fact, adoption of the resolution occurred less than a month after his nomination and before Mr. Walker's membership in the Olympic Club was raised as an issue in the community.

Further, Mr. Walker was a central figure in motivating the Olympic Club to hold a second plebescite, the one held in January of this year. Let me point out that in support of the first one and in noting the lobbying by Mr. Walker that has been commented on by Mr. Dawson in his letter, the vote in that first plebescite was against changing the bylaws, but those within the club who sought to do so numbered about 1500, somewhat less than half. I submit that that was reason for someone who was eager to change the club rather than leave it; that vote offered very substantial hope that a second plebescite, after some work to change attitudes, might indeed produce a different result.

As further evidence of Mr. Walker's active opposition to discrimination, after last year's hearing he presented to the committee a copy of a letter that he had sent to the management of the Olympic Club criticizing an employee of the club for that employee's racial epithets directed against another employee who was Asian. That letter was sent in 1980.

Mr. Chairman, when then Judge Kennedy resigned from the Olympic Club in October of 1987, he indicated that the defeat of the plebescite on admission indicated to him that the club was not making progress on the issue. I would submit that he was entitled to that view. On the other hand, others who decided that there was progress possible include the former Mayor of San Francisco, Joseph Alioto, who along with State Senator Quinton Kopp was scheduled to testify on behalf of Mr. Walker at the hearing two weeks ago, which was cancelled because of the San Francisco earthquake.

Both have made videotapes. I understand the rules of the Committee do not permit those to be shown. Transcripts of the statements made by Senator Kopp and by former Mayor Alioto are available, and I would ask that they be made a portion of the record, and I would quote to you from Mayor Alioto's letter. This is the same Mayor Alioto who was a candidate for the Democratic nomination for Governor of California, and someone who I think is well-known to have been extraordinarily concerned about working against discrimination in his city as mayor. I can testify to that.

He says in his statement, "I think that was a demonstration of his real social attitude." This is in reference to the work by Mr. Walker to change the bylaws in the Olympic Club. Mayor Alioto writes, "that was a demonstration of his real social attitude on the actions of the Olympic Club. I say once more, there are still in the Olympic Club a lot of people with decent social views, and they are hoping too, and not necessarily against hope. I think it is going to work out. They are hoping too that there will be a transition into the 20th century by that organization in connection with its views on discrimination against women and discrimination against blacks. So sum up, Mr. Chairman, I strongly support the nomination of Vaughn Walker," I am not summing up, Mr. Chairman, this is quoting the mayor—"and urge that you confirm that nomination that Vaughn Walker take his place as a Federal judge where I am sure every litigant will get a fair shake and where he will be very, very sensitive to the claims of those who have been discriminated against in our society."

[The statements of Mr. Alioto and Mr. Kopp follow:]

STATEMENT OF THE HONORABLE JOSEPH L. ALIOTO

October 27, 1989

I am making this video in support of the nomination of Vaughn Walker to be a Federal judge in San Francisco. I regret very much that I can't do this in person to take your questions and to be cross-examined by you. But the issues in this case are pretty much in the public print and I think I can answer those questions directly. I am not with you because at the present time I am trying a four week case in the Federal court, and that's sitting on an all week basis so there isn't any way that I can be there. Nevertheless, I want strongly to support the nomination of Vaughn Walker, and let me give you the reasons.

Mr. Walker is a man of great integrity, he is a man that's talented, he is bright, he is hard working and he has, I think, a strong and abiding sense of fairness. I think that anybody, any litigant in his court, is going to be treated well.

When I was Mayor of San Francisco from the period 1968 to 1976, the firm of Pillsbury, Madison & Sutro was very helpful to me. They had been adversaries of mine over a period of 40 years. They have been as of today, over a period of 40 years, most of the antitrust cases which I have taken on behalf of plaintiffs have found Pillsbury, Madison & Sutro on the other side. Nevertheless, during the course of that urban crisis, and I think you all know what was happening between 1968 and 1976 in the American cities, nevertheless during the course of that crisis, that firm was very helpful to me in organizing the business community for the purpose of seeing to it that minorities got jobs. That was a very, very important thing.

One of the members of that firm, Mr. John A. Sutro, served on the Public Utilities Commission and on the Airport Commission. And its in those two commissions that had a lot of jobs, where jobs were important, that so many minorities were accommodated with jobs that, I think, was one of the reasons why we were able to assuage the social difficulties of the time. I recall, for example, a few nights after the brutal assassination of Martin Luther King that President Johnson called me and said he was delighted that San Francisco was one of the very few cities in the country that wasn't burnt. And I attribute that in good measure to the fact that we were able at that time to eliminate the barrier that had been erected in connection with the racial discriminations that unquestionably were taking place in America at that period of time. And the firm of Pillsbury, Madison & Sutro was extremely helpful in organizing the business community to those social needs and they were social needs that removed discrimination against minorities, against Blacks, against Hispanics, against women, against gays and others who weren't quite getting the full slice of the pie so far as the mainstream of American life was concerned, so that should be noted.

I want to note personally, too, that so far as Mr. Walker is concerned, we have engaged in litigation with him on the same side, representing different clients. We have had an opportunity to observe him at close range and Mr. Walker, in our view, has great, great professional ethics, has a great sense of dedication to his clients, has certainly a very strong sense of fairness. I know some criticisms have been raised against him. Its been said that he was too aggressive in connection with a lawsuit against the Gay Olympics, he representing the Olympic Committee. That suit was won on the merits and he was a professional, he was representing his client and he had to represent that client to the best of his ability. And when he wins a case he has to follow out on certain procedures for the benefit of that client, that only the client can waive. Those benefits that were achieved in a victory in the courtroom where the court determined that the merits were definitely on the side of the Olympic Committee.

And so far as the Olympic Club, speaking of the Olympics, as far as the Olympic Club is concerned, let me say about that, that there are lots of decent San Franciscans with good social aptitudes who are still in the Olympic Club, hoping that the Olympic Club will be brought into the 20th century so far as its views on discrimination against women and Blacks are concerned. Mr. Walker stayed in that club and he fought on the side of changing the by-laws of that organization. After the board of directors acted one way, a referendum was sought among the membership to reverse the action of the board of directors. When that referendum failed and the board of directors were affirmed, Mr. Walker then left the organization. I think that was a demonstration of his real social attitude on the actions of the Olympic Club. I say once more, there are still in the Olympic Club a lot of people with decent social views and they are hoping, too, not necesarily against hope I think it is going to work out, they are hoping, too, that there will be a transition into the 20th century by that organization in connection with its views on discrimination against women and discrimination against Blacks.

So to sum up, Mr. Chairman, I strongly support the nomination of Vaughn Walker to be a Federal judge in San Francisco and urge that you confirm that nomination and that Vaughn Walker take his place as a Federal judge in San Francisco where I am sure every litigant will get a fair shake and where he will be very, very sensitive to the claims of those who have been discriminated against in our society.

Thanks very much for the opportunity to do this on video. I'm sorry I can't be with you. Hope to see you some other time.

STATEMENT OF CALIFORNIA STATE SENATOR QUENTIN L. KOPP

October 30, 1989

My name is Quentin Kopp. I am a member of the California State Senate. I am also a practicing trial lawyer in the City and County of San Francisco. I regret that I am unable to be present personally to present my testimony in support of the nomination of Vaughn Walker to be a United States district judge in the United States District Court for the Northern District of California, but I am unable to be present to do so because on the morning of November 9th I will be in a Los Angeles Superior Court representing a client with respect to a motion for summary judgment in an action pending in that court.

I have known Vaughn Walker for approximately 12 to 15 years. I'm a lawyer as indicated, a graduate of the Harvard Law School in 1952. I served for almost two years in the Judge Advocates Department of the United States Air Force prosecuting general courts-martials and defending cases in special courts-martials. After one year as assistant counsel with the Waterfront Commission of New York Harbor, I began practicing law in San Francisco in December of 1955 and I have practiced continually for almost 34 years.

I was admitted to the District of Columbia Bar while in the United States Air Force in September of 1952. I was admitted to practice in all of the courts of the State of California while in the Air Force in January 1954 and also admitted to the United States District Court for the Northern District of California and the United States

Court of Appeals for the Ninth Circuit. In May 1955 I was admitted to practice in my native state, the State of New York.

In 1986 I was elected to the California State Senate as an independent. The first non-incumbent independent to be elected to the California Legislature since 1878. In 1982, Vaughn Walker represented others and me in a complicated case arising from an initiative which I had co-sponsored and which was the subject of a challenge in the courts of the State of California. In that instance, and in other instances in which our careers have crossed, Mr. Walker has exhibited always the highest degree of professionalism and competency as well as temperance as a member of the State Bar of California. His reputation for truth, veracity, integrity, professional ability and professional conduct is of the very highest order in the City and County of San Francisco and throughout the Bay Area.

I am informed that there has been opposition to Mr. Walker's nomination arising from his representation of a client; the client, the United States Olympic Committee. I am the founder and the president of the Bay Area Sports Organizing Committee which was established in January 1987 for the purpose of obtaining a future Summer Olympics in the San Francisco Bay Area. As such, I have had the opportunity to read all of the pertinent documents with respect to Mr. Walker's representation of the United States Olympic Committee. The same sources of opposition to his nomination oppose any effort on the part of the Bay Area Sports Organizing Committee to secure an Olympics in the San Francisco Bay Area except upon conditions which those sources would have imposed.

It is a matter of record that in June 1988 the voters of San Francisco were presented with an opportunity to vote on a initiative resolution to establish as official policy of the City and County of San Francisco an open invitation to the International Olympic Committee to select the San Francisco Bay Area for a future Olympics in 1996 or thereafter. The voters of San Francisco by a super-majority of approximately 66 per cent approved that initiative resolution. Mr. Walker's conduct in that case, as well as in all other actions with respect to which I have any degree of familiarity, has been exemplary. He is extremely well qualified to be a United States district judge. Confirmation of his nomination would be consistent with the highest standards of the administation of justice in the Federal judicial system and would be consummately in the public interest.

I urge you with all of my sincerity to vote to confirm Vaughn Walker to be a United States district judge in the United States District Court for the Northern District of California, a court of which I have been a member for over 35 years.

Thank you very much for your time and your attention.

Senator METZENBAUM. Senator Wilson, I do not want to interrupt you, but I want to point out that the chair is going to have to leave this hearing at 12 o'clock. We have been hearing opening statements for 45 minutes, and it is no disrespect to you or any other member because I made my own. But if we do not finish by 12 o'clock, and Mr. Walker's hearing is carried over, there are ten witnesses here—I think most of them from San Francisco—I am concerned that there will be the charge that we are delaying the hearing. I would like to move on as promptly as possible.

Senator WILSON. Mr. Chairman, I will sum up as quickly as I can in the interest of permitting you to do just that because I am eager to have an opportunity to hear and also to question some of these witnesses. Let me just conclude that on the issue of Mr. Walker's view of society, it is important to note that he has long been supportive of women and opportunities for them, particular career opportunities, especially those within his own profession, the law.

He has worked for their attainment of judgeships. And in fact, two of the California State judges for whom he has worked, Ina Gyemant and Diane Wick, will so testify on Mr. Walker's behalf. Let me briefly allude to other letters that I ask be made a part of the record because they go to the point earlier made about the excessive zeal with which Mr. Walker conducted himself as counsel. And let me in regard to that remind the Committee of the testimony at the 5-hour hearing last year by Ephraim Margolin, not simply a former member and lawyer for the ACLU, but their general counsel for Northern California, who was recently, by the way, selected by California Lawyer Magazine as one of the State's 10 most respected criminal defense lawyers.

Mr. Margolin, it is worth recalling, told the Committee that Mr. Walker is, quote, "a fair and good human being. I cannot find a single prejudiced bone in his body." He described Mr. Walker as a person with, "an inquiring mind and one open to argument." With regard to the gay olympics case, Mr. Margolin testified that Mr. Walker, quote, "was a vigorous advocate for his client which is what lawyers are supposed to do." And in summation, Mr. Margolin said, quote, "The real issue before us ought to be only one: is Vaughn Walker qualified to serve as a judge, and the answer is yes by temperament and in every other way."

With regard to the so-called Spendthrift case, Mr. Chairman, you have received a letter from Garth Guy which in most intemperate language has criticized Mr. Walker. In response it should be noted first that Mr. Guy filed a complaint about Mr. Walker's conduct with the California State Bar which dismissed the complaint in its entirety. Second, in response to Mr. Guy's letter, an attorney who represented him for a limited purpose in this Spendthrift case has also written to the Committee. Attorney Lawrence Popofsky in his letter to the Committee has stated—excuse me—in the letter Attorney William Mussman, "wrote never has there be a hint that Mr. Walker's conduct was improper, let alone unlawful or unethical. He is a man with true compassion for the less fortunate, with a devotion to his country and its system of justice, and an admiration for natural beauty and for justice and for truth."

Mr. Mussman goes on to write, "I was particularly distressed at the accusations made by Mr. Garth Guy. I actually represented Mr.

Guy early on for a limited purpose. In my dealing with Mr. Walker in that case on behalf of Mr. Guy, he was both courteous and accommodating." I would ask that Mr. Mussman's letter be inserted in the record.

Senator METZENBAUM. Without objection it will be included in the record.

[The letter of Mr. Mussman follows:]

WILLIAM E. MUSSMAN
THREE EMBARCADERO CENTER
SUITE 1060
SAN FRANCISCO, CA 94111-4056

October 13, 1989

Re: The Nomination of Vaughn R. Walker To A Federal Judgeship in the Northern District of California

The Honorable Howard M. Metzenbaum
United State Senate
SR-140 Russell Senate Office Building
Washington, DC 20510-3502

Dear Senator Metzenbaum:

Every experience must have a "first time," and this is the first letter I have written concerning the nomination of a Federal judge. I do so now because it is obvious to me that the opposition voiced to Vaughn Walker's nomination is both scurrilous and without substance.

It is without substance in the sense that most of his conduct of which his detractors complain was taken in furthering the cause of his clients in cases he was prosecuting or defending on their behalf. It is our obligation, as lawyers, to do just that - exert every effort within the bounds of the law and ethics to further our clients' interests.

I have known Vaughn Walker for many years - first when I was one of his supervising partners at Pillsbury, Madison and Sutro, later as a fellow partner at the firm, and finally when I was a client in my capacity as the Legal Vice President of a company represented by Mr. Walker's firm. Over all of these years, Mr. Walker's proficiency as a trial lawyer has been manifest, and never has there been even a hint that his conduct was improper, let alone unlawful or unethical. His reputation before bench and bar is impeccable, as I am sure every reputable lawyer and judge in the area will testify if asked.

I have also had the privilege of knowing Mr. Walker as a person as well as a lawyer. He is a man with true compassion for the less fortunate, with devotion to his country and to its system of justice, and with an admiration for natural beauty and for truth. We are fortunate to have one of his character and capacity be willing to forgo a lucrative practice to serve as a federal judge.

I was particularly distressed at the accusations made by Mr. Garth Guy - a defendant in a securities case in which Mr. Walker represented some of the plaintiffs. I actually represented Mr. Guy early on for the limited purpose of seeking reconsideration of Mr. Guy's motion to file a cross-complaint (which the court granted). In my dealing with Mr. Walker in that case on behalf of Mr. Guy, he was both courteous and accommodating. My observation was that all counsel, as well as Judge Legge, respected Mr. Walker both for the clarity of his presentations and his knowledge of the law.

I appreciate the opportunity to address you and your Committee by letter in support of Mr. Walker's nomination and in deprecation of the irrelevant and false charges that have been made by others. It will, in my considered judgment, be a great blow to the effective administration of justice in this area and to the nomination process as a whole if Mr. Walker's confirmation is denied on the record made by his detractors.

Very truly yours,

William E. Mussman

WEM:cc

cc: Senator Strom Thurmond
Senator Pete Wilson

Senator **Wilson**. There is also a letter from Lawrence Popofsky who was cocounsel to Mr. Thomas Bourke, who will be heard later, as I understand it. I would ask that Mr. Popofsky's letter be made a part of the record and simply point out that in it Mr. Popofsky stated that Mr. Walker represented his clients in the *Spendthrift* case with the highest level of skill, integrity, and tenacity.

[Letter of Mr. Popofsky follows:]

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M. LAURENCE POPOFSKY
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November 1, 1989

EXPRESS MAIL

Senator Joseph R. Biden, Jr.
Chairman Senate Judiciary Committee
224 Dirksen Building
Washington D.C. 20510-6275

Mr. Vaughn Walker

Dear Senator Biden:

I write in connection with the nomination of Mr. Vaughn Walker for the position of federal judge in the United States District Court for the Northern District of California. I feel obliged to do so because of the letter directed to you by Mr. Thomas K. Bourke of Riordan & McKinzie, one of my co-counsel for defendants in the Spendthrift Farm Securities Litigation. That litigation is just now concluding in the United States District Court for the Northern District of California before the Honorable Charles Legge. In that connection, I am currently involved in settlement discussions with Mr. Walker and for that reason have been reluctant to write. However, since Mr. Walker's conduct of the Spendthrift Farm Securities Litigation has been made relevant to his nomination, not only by Mr. Bourke, but also by the Board of Supervisors of the City and County of San Francisco, I feel it imperative that I write now.

For the record, I am a lifelong Democrat who has supported Senator Cranston and every Democratic presidential nominee since my arrival in California in 1962. Prior thereto I was graduated from the Harvard Law School and Oxford University, where I studied jurisprudence as a Rhodes Scholar. I am a member of the American College of Trial Lawyers.

Prior to the Spendthrift Farm Securities Litigation I did not know Mr. Walker personally. I was, of course, familiar with his reputation as an excellent litigator who served his clients' interests vigorously and with a high degree of professionalism. That reputation was largely shaped by Mr. Walker's representation of major corporate defendants in antitrust and other matters.

It became my lot in the Spendthrift Farms Securities Litigation to represent a lawyer charged with securities fraud and professional malpractice in connection with a private offering of the securities of the Farm. As the litigation progressed my firm's client became the principal target. As a consequence, I served as lead lawyer for the defense at trial, which spanned three months last summer after several years of intense discovery. I shared the court room with Mr. Walker through the bulk of the trial until (happily) the case against my client was dismissed when plaintiffs rested. The remaining defendants were vindicated by the jury some two weeks later.

The litigation was a terrible ordeal for my client, a distinguished lawyer from Lexington, Kentucky. He was profoundly outraged by the charges against him and was, of course, pleased by the outcome. He personally believed the charges should never have been brought or should have been dropped somewhere along the line. As a consequence, I would not be surprised to learn that he has written to you expressing his strong negative views about Mr. Walker.

But strong emotions are the handmaiden to justice in our system of jurisprudence. My client's feelings in the Spendthrift Farm Securities Litigation are not uncharacteristic of those of dozens of other clients I have represented or who have faced what they consider to be unjust claims. Particularly in connection with securities litigation, the law invites plaintiffs who believe themselves wronged to instruct their lawyers to cast their claims as widely as possible, thereby often striking at professionals. While one can lament that development (as I do) it provides no basis for personal criticism of the kind that has been heaped upon Mr. Walker by virtue of his role in the Spendthrift Farm Securities Litigation.

From my personal observation of Mr. Walker as his adversary, let me say that he represented his clients' interests with the highest level of skill, integrity and tenacity. His written arguments, which were extensive, were ably done. His oral advocacy was effective, even if unsuccessful. From beginning to end Mr. Walker's performance was thoroughly professional. Of course he did not win: I and others did. But that simply reflects the fact that the case he was dealt by his clients proved to be weaker than he may have initially thought. As a consequence, theories of liability did shift and judgments made under the press of controversy did change. But all of that was ordinary and scarcely justifies the harsh language which appears in Mr. Bourke's letter. I have no doubt that Mr. Walker would do some aspects of the litigation differently, with the benefit of hindsight, including, perhaps, dismissing Mr. Bourke's client earlier and perhaps settling with mine. But I know of no trial in which my judgments remained fixed and proved unassailable throughout and I dare say that experience is not unique. Put simply, nothing occurred in the course of the Spendthrift Farm Securities Litigation which caused me to doubt Mr. Walker's fine level of professionalism.

Based on my litigation experience, I categorically reject the suggestion that Mr. Walker is somehow vindictive, lacking compassion or otherwise bereft of those qualities which would make him a fine addition to the United States District Court for the Northern District of California. From all that I can discern here [illegible] in his other professional callings, Mr. Walker served his clients' interests -- right or wrong, popular or no -- as a skilled lawyer should. I believe him worthy of your and your Committee's support.

Yours sincerely,

M. Laurence Popofsky

cc: Senator Thurmond
Senator Wilson ✓
Senator Cranston
Vaughn Walker, Esq.

Senator WILSON. There is more that could be said, but I am interested in hearing the witnesses as well, Mr. Chairman. So I thank you for the opportunity to present these points and also to sit with the committee, and I will relinquish my place here at the microphone and come and join you.

I would point out one thing seeing Judge Heflin here. One point of law was raised earlier in the hearing last year by Judge Heflin. He asked Mr. Margolin whose responsibility it was to prepare release papers for the discharge of a lien when, in fact, that lien has been vacated. The response from Mr. Margolin to the Judge was it is the duty of the attorney for the person, for the client against whose property the lien has been levied.

Senator METZENBAUM. I just have to say to you, Senator Wilson, that that is not my interpretation of the law. That is not one of the major issues with respect to this witness today, but that would not be my concept of whose responsibility it is. I do not know if it is a matter of law or whether it is a matter of propriety. Let me say that there are two other letters from opposing attorneys besides the matter of Mr. Guy in the *Spendthrift* case which do not support Mr. Walker's conduct. In the interest of fairness, we will include those in the record as well.

[Letters from opposing attorneys follow:]

Vickery, Riehl and Alter
Attorneys at Law

Suite 330
580 South High Street
Columbus, Ohio 43215-5671

Byron Vickery Co. L.P.A.*
Lawrence A. Riehl
Michael J. Alter

* Also Admitted In
Kentucky And Michigan

614 224 [illegible]

89 OCT 17 PM 12: 08

October 11, 1989

Senator Howard Metzenbaum
Senator Dirksen Building
Washington, D.C. 20510

Dear Senator Metzenbaum:

I have been informed that you will Chair the Senate Judiciary Sub-Committee which will consider the nomination of Vaughn Walker to the U.S. District Court bench in San Francisco.

Over a period of approximately two years, I had professional dealings with Mr. Walker, San Francisco Attorney, with regard to an extensive and well-publicized federal securities case which was recently heard in San Francisco.. My dealings with Mr. Walker were such that I very seriously question his ethics, and it is my personal opinion that he should not be considered favorably for the Federal bench.

I would be pleased to speak with anybody from your office concerning further documentation and input with regard to Mr. Walker and which will, I believe, confirm the impressions which I have given herein.

Very truly yours,

Byron Vickery

Byron Vickery

BV/la

WYATT, TARRANT & COMBS
LEXINGTON FINANCIAL CENTER
LEXINGTON, KENTUCKY 40507
606 233-2012
TELECOPIER 606 259-0649
TELEX [illegible]

November 6, 1989

VIA FEDERAL EXPRESS

Senator Joseph R. Biden, Jr.
Chairman Senate Judiciary Committee
224 Dirksen Building
Washington, D.C. 20510-6275

RE: Nomination of Vaughn Walker for the U.S. District Court for the Northern District of California

Dear Senator Biden:

After having reviewed recent correspondence to you from Thomas K. Bourke of the law firm of Riordan & McKinzie, regarding the nomination of Vaughn Walker, I felt compelled to elaborate upon and corroborate some of the views of Mr. Bourke.

I, like Mr. Bourke, met Mr. Walker for the first time because of his representation of some of the plaintiffs in the Spendthrift Farm Securities Litigation. Mr. Walker's clients had named my client as a defendant in this case. I felt that my client was improperly joined in the litigation and after spending hundreds of thousands of dollars in attempting to substantiate that my client had no liability, it became apparent that in order to prove that my client had no liability would take hundreds of thousands of dollars of additional legal expenses which made no practical sense for my client. As a result, a settlement was negotiated on behalf of my client to avoid the continual mounting of unnecessary legal expenses and left the remaining defendants the task of substantiating my client's lack of liability at trial.

As a result of the settlement negotiated with Mr. Walker as the lead counsel for the other plaintiffs' attorneys, my client and his attorneys agreed not to assist any of the remaining defendants in defense of the then pending litigation. Also, as part of the Settlement Agreement, we specifically reserved the right to represent my client with respect to any other pending or subsequent claims, i.e. identification and contribution sought against my client by the other defendants.

Mr. Walker continued to move forward with this litigation against the remaining defendants, including among the various claims that my client had been part of a conspiracy to either fraudulently inflate the values of the assets in the offering or to negligently misrepresent the values. As a result, Mr. Walker made it necessary for my client to continue to defend against his potential liability for contribution and indemnification from other defendants. As such, when Mr. Walker's expert witness as to thoroughbred appraisals was to be deposed, with respect to my client's appraisal, it became incumbent upon me to defend my client's appraisal and to prove beyond a shadow of a doubt that Mr. Walker's expert was not familiar with the methodology employed by appraisers or the standard of care utilized in appraising thoroughbred horses. By virtue of my appearing to depose the expert, Mr. Walker, during a break in the deposition, threatened me with his clients' refusing to proceed with the Settlement Agreement if I continued to examine his expert witness on the contention that my appearance at the deposition constituted a breach of the Settlement Agreement. After I pointed out to Mr. Walker that I had the right under the Settlement Agreement to defend my client from claims of indemnity and contribution and that I intended to proceed unless his clients would hold harmless my client against any liability that might arise.

Mr. Walker refused on behalf of his clients to indemnify my client and further threatened not to honor the Settlement Agreement. As a result of what I would characterize as vindictiveness on the part of Mr. Walker, which was eluded to by Mr. Bourke in his letter Mr. Walker's clients failed to move forward with concluding the Settlement Agreement and my client was forced to move the Court to compel enforcement of the Settlement Agreement. The day before the hearing on my Motion (which included a request for attorney fees against Mr. Walker's clients) the plaintiffs finalized the settlement with our client and avoided what I believe would have been an Order compelling the settlement plus recovery of attorney's fees. It is this particular instance, that leads me to believe that in the event Mr. Walker should become a federal judge, he may attempt to retaliate in some fashion against either myself or others should we ever appear before him as a Federal Judge. I must agree with Mr. Bourke as to Mr. Walker's virtues, that he works hard, is intelligent, well read, and other than the instance referred to above during the break in the deposition of his expert witness, does not lose his temper. I, like Mr. Bourke, feel that a federal judge should be a person whose personality traits do not include any hint of vindictiveness.

I am writing to you to explain my views because of my concerns, but for the benefit of you and the committee, I would like you to be aware that I have never been involved in the political process, either as a contributor to a political campaign or otherwise. I speak out now only because I would have to believe that there are others in the Northern District of California that would have many of the qualifications as Mr. Walker but who would not have any vindictiveness as a part of his personality which, in my opinion, would afford the Northern District of California with a more viable alternative for the United States District Judge.

This letter reflects only my personal view and not that of the law firm or its members. Should you or any of the members of the Committee or the Committee Staff care for more information or would desire to ask me any questions, please feel free to contact me.

Very truly yours,

WYATT, TARRANT & COMBS

Jack G. Jones, Jr.

JJJ:jlb
cc: All members of the Senate Judicial Committee
(by enclosure 14 copies)

BIDEN.LTR

Senator **Metzenbaum**. Senator Heflin, did you have something you wanted to——

Senator **Heflin**. No, I was just listening.

Senator **Metzenbaum**. Thank you very much. Mr. Walker, I am happy we are able to get to you, and I hope that we can proceed rapidly enough that I will not have to continue this hearing. Would you be good enough to rise? Do you solemnly swear to tell the truth, the whole truth, and nothing but the truth, so help you God?

Mr. **Walker**. I do.

Senator **Metzenbaum**. Are there any members of your family here with you, Mr. Walker, that you care to introduce?

TESTIMONY OF VAUGHN WALKER, SAN FRANCISCO, CA, TO BE U.S. DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF CALIFORNIA

Mr. **Walker**. Yes, thank you very much, Senator Metzenbaum. I would like very much to introduce to you and to the members of the Committee my sister Carolyn Catrell and her daughter Susan Catrell, who are here from Connecticut. And also a number of friends are here in addition to the witnesses who are going to speak in support of the nomination. A very old and dear friend, Vince O'Brien, who grew up with me in Illinois, and who proves the trueness of his friendship by returning to this body to hear the second round of this hearing. Terry Calvani, who is a commissioner on the Federal Trade Commission, is here. Two people from my law firm, Fred Lowell, who handles our political law work, is here, as well as Ken Hagen, who has worked with me in litigation matters. And I am very pleased that they are here and appreciate the opportunity to introduce them.

Senator **Metzenbaum**. Happy to welcome all of them. We are pleased that they are here and that they believe enough in you to be with us this morning. Mr. Walker, do you have an opening statement?

Mr. **Walker**. I do not, Senator. We have heard quite a bit by way of opening statements. I certainly join with the sentiments expressed that I would like to see this proceeding move along as quickly as possible. Obviously for all of the reasons alluded to by Senator Simpson, I want this matter resolved as a matter of personal convenience and necessity to myself and obviously there is a great need in the Northern District of California to augment the bench there. The backlog of cases is growing. That district not only has a heavy criminal caseload, but it also has a very heavy and unusually complex civil caseload by virtue of the presence in the Northern District of California of so many companies, universities, and institutions engaged in the electronics field and the biotechnology fields.

So the work of that court needs to be done. That court needs a judge, and I hope very much that the committee will see fit to confirm me to that position.

Senator **Metzenbaum**. Mr. Walker, the chair, and I believe I speak for all members of the committee, has no intention of delaying the action of the committee in connection with your nomination. It is my opinion that we—I hope we can conclude this hearing so that the committee may act upon it, and either a vote to confirm you or recommend your confirmation or a vote in the opposite manner, but I think I agree that the matter has been longstanding.

Let me ask you some questions to get to the nub of some of the issues.

Mr. WALKER. By all means.

Senator METZENBAUM. First of all, let me say that your zealousness in a litigated matter does not on its face concern me. I do know what other aspects of that may be brought out in the testimony today, but an attorney who is zealous in behalf of his or her client does not provide any cause for me to be concerned about your being a member of the judiciary.

But I think that the question of club membership, your conduct in connection with the Olympic Club is unquestionably the major point, and I think it is fair to say that timing has much to do, in other words your timing, when you acted, under what circumstances. If a nominee comes before us and learns that he or she is going to be up for nomination for confirmation, and only then acts, then one has a right to question that individual's commitment to a policy of non-discrimination in clubs.

Now you were a member of the Olympic Club in San Francisco for almost 15 years. The Olympic Club did not have a black member until 1988. Shortly after an anti-discrimination suit was against the club by the city attorney of San Francisco. The club's bylaws grant full membership status only to men. Women are not granted voting rights in the Olympic Club, nor are they permitted to join the club in their own right. I want to say that I had mentioned the matter of women not being accorded all of the facilities, but it is also the fact that they are not accorded voting rights as well as not being permitted to join the club in their own right.

Now throughout 1988, while your nomination was pending before the committee, you remained a member of the club even though it was the subject of an anti-discrimination suit brought by the city of San Francisco. Now it is my collection—let me just go on. Your nomination was not acted upon by the committee last year. This year President Bush renominated you in late February. I might say that prior to that time or at least not much before that time depending upon whose version of the evidence is correct, you took no action after the committee failed to move forward with your nomination made by President Reagan. And I think there is a question why that hiatus?

Now on April 4, Senator Cranston sent a letter to Chairman Biden opposing your nomination. Senator Cranston's opposition was based on your membership in the Olympic Club. Shortly after Senator Cranston announced his opposition, the committee learned for the first time that you had resigned from the Olympic Club. Your letter of resignation, which is dated February 15, was not recorded as having arrived at the club until April 11. Even with the United States Postal Service, which is not too good at times, that is a pretty long period of time for a letter to be delivered.

Accordingly, the board of directors of the club did not accept your resignation until April 13, and they made the resignation effective on April 1. Now I understand there is something about your having delivered the letter to Mr. Dawson, and would you be good enough to tell us what that is, but also tell us why you took no action with reference to resignation between the time the committee failed to act on your nomination—was that in 1988—it was in 1988 if my recollection is right—and until after or about the time Senator Cranston sent in his letter objecting to your being confirmed?

Mr. **Walker**. Senator Metzenbaum, with all due respect your facts are wrong——

Senator **Metzenbaum**. It would not be the first time.

Mr. **Walker**. In asserting that I took no action from the time that this committee took no action on my nomination with respect to the policies of the Olympic Club. The hearing before this committee in 1988 was, I believe, June 13. On July 1, 1988, I received a communication from an officer of the club—I believe it is the president—stating among other things that the club was opening up a letters-to-the-editor column for people to express their views about issues facing the club. On, I believe, July 18 I wrote a letter to the editor of the Olympic Club expressing my view that the club should revisit the issue of full voting membership for women, and had that letter delivered to the Olympic Club or mailed to the Olympic Club.

Senator **Metzenbaum**. Was that letter published?

Mr. **Walker**. I do not believe it was. I did not see it published.

Senator **Metzenbaum**. Has the committee received a copy of that letter?

Mr. **Walker**. Well, I believe so. I believe I have furnished a copy of that letter to the committee. I am reasonably sure I have, and if I have not, we certainly can provide it. Then I believe it was in September a group which I was active in called the "Save the Olympic Club Committee" which was committed to the process of changing the membership practices of the Olympic Club began circulating a petition to place before the membership of the club a new referendum or a new poll to change the membership bylaws of the club.

I believe I signed that petition in September or October. It was submitted along with other petitions to the board of directors and ultimately resulted in a new referendum which was sent out in December and I believe through January, a mail referendum, asking the members whether they wished to change the bylaws to eliminate the restriction of membership to men. And obviously I supported that bylaw change and talked to a number of people about that bylaw change. I know the committee staff has over the last several weeks talked to a number of the people who are members of the club, and they have verified that I supported that initiative referendum, and urged others to support it as well.

After that was defeated, I believe in late January when I learned of its defeat in late January or early February, I made up my mind that the hope of progress, hope of change in the Olympic Club was not sufficiently good that I could remain a member of the club, and consistent with the statements which I made to this committee when I was here in 1988, having concluded that the hope of voluntary progress was minimal, I decided to resign and did so. Now with respect to the letter of resignation, I knew full well, Senator, that there was a possibility that I might be here again. In fact, I think the letter so states, and I knew this issue would be before the committee, and I wanted to make the letter as expressive of my views as possible, and choose my words carefully. And so I reviewed the letter with Mr. Dawson who is a lawyer and a friend, who was a former president of the club, and who is fully supportive of changing the bylaws and is committed to that objective as I am, and has worked in the club to achieve that objective, I reviewed the letter with him. He offered to deliver it to the club, and I had it delivered to him on the 15th of February.

Now I did not publish that letter. I did not call a press conference. I did not try to draw attention to it, Senator. I considered it a private matter which I figured might if renominated become an issue. So I wanted to review it with Mr. Dawson. But the burden of your remarks that from the time I was before this committee in June 1988 till the time of my resignation I did not do anything is simply wrong, Senator.

Senator METZENBAUM. I appreciate the clarification or correction, whatever the case may be. Now the club shows that they received your letter on April 17 and made your resignation effective as of April 1, is that—April 11—I am sorry—made it effective as of April 1. Is that correct?

Mr. WALKER. I do not know. I do not know when the club received the letter. I gave the letter to Mr. Dawson. Mr. Dawson said he would deliver it to the club and handle it, and that was perfectly satisfactory with me. I wanted it handled in that fashion. At the behest of this committee, I talked to the manager of the Olympic Club, oh, three or four weeks ago. I had never talked to the man before. He is a new manager, and he told me that the letter came in from Mr. Dawson some time either in February or March and it sat on his desk for a number of weeks. But that is the only information which I have on the delivery of the letter, Senator.

Senator METZENBAUM. I have the letter here from the club to you saying dear Mr. Walker, please be advised your resignation as a member of the Olympic Club was accepted with regret by the board of directors. Your resignation is effective as of April 1, 1989. So that, in fact, you do know the date that——

Mr. WALKER. Oh, I know the date that they accepted it, the effective date that they accepted it. But I do not know anything about the circumstances of its physical delivery. And one other thing, Senator, which I learned after this process began and every step of my resignation as been dissected, as it has been by the staff, it turns out that when you pay your dues at the Olympic Club, you are paying the expenses for the past month and the dues for the prior month.

Now it was in February when I decided to resign, and I figured, well, I was going to obviously pay my expenses for February, which had been incurred, and use the club in February, when I did. So I wanted to pay my expenses in February, and I simply paid the whole bill. I did not realize until this process began that that also had the effect of paying dues through March 31, but I did not use the club past February. I did not use my membership in the club past February, and the effective date that the club accepted the resignation was a matter of indifference to me.

Senator Metzenbaum. Well, as a matter of fact, you resigned as of February 15, is that correct, according to your opinion?

Mr. Walker. Well, I sent the letter on February 15 and continued—I used the club through the end of that month and then I stopped.

Senator Metzenbaum. How many times did you return to the club after you sent the letter of resignation?

Mr. Walker. I have been a guest of two members of the club there on two occasions.

Senator Metzenbaum. No, I did not mean that. Being a guest, I see nothing. That is not relevant. How many times as a member using membership privileges did you use the club's facilities after you had sent the letter?

Mr. Walker. Oh, you mean from February 15 to the end of the month?

Senator Metzenbaum. Yes. And whether or not, did you use it in March also?

Mr. Walker. No, I did not use it past the end of February. I cannot tell you the precise number. I will tell you this, Senator. For almost the entire 15 years that I was a member of that club, it was my custom to use it almost everyday. I swam there almost everyday. I would go there at least 4 times a week, sometimes even 7 days a week. So I was probably a user of that club during the time of my membership maybe 300 times a year, and I continued that till the end of the February, and then stopped and have not been, I have not used the club as a member since then.

And the only two times that I have been in the club since the end of February 1989 were as guests of two members.

Senator Metzenbaum. Well, as a matter of fact, I should point out to you that the statement of the Olympic Club indicates that you did more than swim there after February 15. You charged items on your bill, actually some on February 15 and then several on February 27. So you in your own mind considered yourself still a member of the club even though you had sent the letter of resignation?

Mr. Walker. I considered myself to have that membership through the end of February and then it stopped. I do not believe the letter has an effective date. I did not say I make this resignation effective as of a particular date, but it was my intention having paid my dues through the end of February to use it and then stop. And that is exactly what I did, Senator.

Senator Metzenbaum. Why did you tell our committee that you resigned on February 15 when in fact you continued to use the club as a member on three occasions on and after February 15?

Mr. Walker. Because, Senator, I resigned that club by a letter dated February 15, paid the dues. As I explained to you a moment ago, I used the club through the end of February. The billing and use of the club is done on a monthly basis. It would not have made any difference whether the letter of resignation had been February 1 or February 28, as far as I am concerned. But the letter was delivered to Mr. Dawson on the 15th of February, the date that the letter is dated.

Senator Metzenbaum. Your Olympic Club fee statements indicated that you paid March membership dues on March 16, 1989, more than 1 month after the date of your resignation letter. When you wrote out that check, did it occur to you that you had sent a resignation letter to the club one month earlier?

Mr. **Walker**. It certainly did. I was perfectly aware that there was the last bill I was going to get for the Olympic bill. It has the charges that I incurred in February. I paid those charges, as I felt I was obliged to do. And the club sends out its bills approximately 30 days, well, 15 days I guess it is, 15 days after the end of the month. And it has the expenses that you incur for the prior month. As a member of that club during February, Senator, I felt I had an obligation to pay for the charges that I had incurred. I did not think that the fact that I had resigned the club would get me off the hook for the charges that I had incurred as a member.

Senator **Metzenbaum**. No, I am talking about your membership dues that you paid in March 15, the check on March 15.

Mr. **Walker**. I believe I explained that a moment ago, Senator. And that is simply this. At the time the bills are sent out, which have expenses for the prior month, they have the dues for the current month. Now after this whole process began and after the check had been sent in to pay the February expenses, my secretary discovered that the club's dues' cycle is different from its expenses' cycle and pointed out to me this discrepancy and asked whether we should do anything about it. And I simply said, no, I was not going to ask for my money back.

Senator **Metzenbaum**. Well, I might point out to you that the bill as of March 1 from the club does not actually—I do not actually see. Yes, I do. Yes, I do.

Mr. **Walker**. It says March dues, Senator.

Senator **Metzenbaum**. March dues. March dues. That is right. March active dues.

Mr. **Walker**. You bet it does.

Senator **Metzenbaum**. And so you——

Mr. **Walker**. And you will also find on that statement, Senator Metzenbaum, if I may add——

Senator **Metzenbaum**. So I guess I am not clear about this. Why you were paying March active dues if you resigned as of February 15? Maybe it went over my head. Maybe you explained but I do not get it.

Mr. **Walker**. Senator, you did not notice that and I did not either. I was a member of that club for a long time, and I paid a lot of those bills, and I never parsed out how they kept their books and how they kept their billing statements. I simply looked to see whether they had the right towel charges and meal charges and so forth, and that was it. As you missed it, so did I.

Senator **Metzenbaum**. I am going to—I have some more questions, but I think in fairness I ought to share the time with other members of the committee and then come back if I have additional questions. Senator Simpson.

Senator **Simpson**. Well, Mr. Chairman, you are good to accommodate me. I have to go to another hearing. I wanted to say, you know, that this to me is extraordinary, again, just this line of questions. And Howard Metzenbaum, I have the greatest respect and admiration for. I have said that before. He and I come at each other like a couple of trucks down the road with the headlights on, but I do enjoy him. I know that is hard to believe.

But this, I really know this man somewhat. I do not think he would be personally doing this. This is staff generated balderdash. Here is what we are talking about. We are talking about 39 cents, one 10 cent charge, one $1.14, all in February, and you have just explained that. And these are handed to us as if they were something from the Watergate trials. This is absolutely absurd. The Olympic Club, and here is a copy of the statement. I will tell you. You know you have seen the moon from both sides when you believe that this has anything to do with your ability when you just said what you said, that after March 1 you were not involved at all.

Senator METZENBAUM. May I point out to my good friend that he is only reading the tax on the items, the 39 cents and 10 cents.

Senator SIMPSON. Oh, I see. [Laughter.]

Well, that is a correction on my part. That was the tax. That was $6 for that entry. That is the stupidest thing I have ever done.

Mr. WALKER. Prices are not that good in San Francisco, Senator Simpson.

Senator SIMPSON. I deserve to be severely corrected.

Senator METZENBAUM. That is conclusive, Mr. Walker. On that basis, the error or Senator Simpson, you cannot be confirmed.

Mr. WALKER. Senator Simpson makes a very——

Senator SIMPSON. I am only teasing as you know.

Mr. WALKER. Senator Simpson makes a very good point. Those statements, Senator Metzenbaum, show no use of the club past the end of February.

Senator SIMPSON. Right. I must go but I note that all the witnesses or at least a couple that will be testifying against you seemed all to be budding politicians, one of them using it as a club to get elected mayor and the other one who has just made some extraordinarily sexist remarks about the club, the court in San Francisco. Mr. Hallinan, who I will not be here to hear, said he had no way of knowing if the judges would spend the money for a beauty shop on the fourth floor of the city hall. Well, they certainly ought to consider that remarkable testimony with great clarity. I am going to leave you all to sink in it. Thank you, Mr. Chairman.

Senator METZENBAUM. Thank you, Senator Simpson. Senator Heflin.

Senator HEFLIN. Mr. Walker, in retrospect, after being questioned about your activities and participation to change the rule and admit women, do you think that there was anything else that a reasonable person or an advocate of change would say that you should have done?

Mr. WALKER. I do not believe so, Senator Heflin. Of course, looking back in retrospect on any series of events, you might think of things that you could have done that might have made a difference. You could have done one thing or worked a little harder here or a little harder there. But on balance, what we are talking about, Senator, basically are changing people's ideas and attitudes about the association of men and women in a private voluntary club.

And basically the change that has to be made here is one that has to be made through people accepting these social changes. It takes time. Mr. Dawson's letter notes that I began in the mid-1970's urging him either as a director or president of the club to open up the public facilities to women, and urge that we consider women's membership.

One of the Senators referred to a letter in 1980 to the club manager about what I thought were racially motivated abusive remarks of a club employee. And I thought that, too, was a matter upon which an expression by a club member of outrage at that sort of thing would be helpful in making people more sensitive to the harm that remarks of that kind cause, and that was in 1980, almost 10 years ago.

Senator Wilson has referred to the resolution of the Lawyers' Club in San Francisco urging its members to take steps to bring private, non-sectarian clubs into compliance with equal opportunities for all people, all races, men and women alike. So I do not think, Senator, there is anything substantively that could have been done. I am sure in retrospect I could have done more and others could have done more, but whether it would be effective I doubt very much. I think we must continue to work toward the goal of equal opportunity, and I think we have to do it effectively by working with our fellow citizens to convince them of the great virtues and benefits.

Senator HEFLIN. Could you name five people that were members of that club who took a lead along with you in endeavoring to get change?

Mr. WALKER. Yes. Herbert Brown, who is a lawyer by training, although I do not believe he practices law. He is in Oakland and now in business. James Robertson, who is a lawyer in San Francisco, and a very old and good friend of mine. He has written to the committee on at least one occasion. Mike Gettleman who is a lawyer in San Francisco who has worked toward this objective. Mr. Dawson who has written to this committee and whom Senator Metzenbaum mentioned. David Dawson is a lawyer, a former president of the club, all of these people, Senator, have worked toward the objective of providing access to the club and membership into the club to people of all races and to men and women alike.

Senator HEFLIN. Would you compare your efforts with the efforts of those individuals?

Mr. WALKER. Well, I think I was working along with them. They each did different things. Mr. Dawson was part of the club establishment, if you will, as a member of the board, as a former president of the club. He had associations in the club different from mine. Mr. Brown and Mr. Gettleman are sometimes regarded as dissidents in the club, outspoken. They would obviously be appealing to a different constituency. I would think Mr. Robertson and I would fall into a middle category. Neither of us were officers of the club and therefore did not have access to those means of expressing our views. But I do not think we were regarded as dissidents either.

Senator HEFLIN. Justice Kennedy of the Supreme Court, I think, was a member of this club——

Mr. WALKER. That is correct.

Senator HEFLIN. If I recall correctly, he resigned about the time of his nomination. Did he take any active role relative to trying to bring about a change?

Mr. WALKER. I do not know that he did. I do know that in connection with his confirmation hearings, one letter that he sent to a Mr. Anthony Diepenbrock, who is a lawyer in San Francisco, was published. I believe, Senator Heflin, that that is the only expression of Justice Kennedy's views on the subjects that appeared in the record of his confirmation, and it is the only thing I am aware of.

Senator HEFLIN. Are there members of that club as of the time that you left who are former Cabinet members or high ranking officials in administrations including the Carter administration or, the Reagan administration? Do any names of members, do any of those come to mind?

Mr. WALKER. Yes. As a matter of fact, Judge Heflin, the lawyer who is representing the Olympic Club in the litigation that has been brought by the city and county of San Francisco is the former United States Ambassador to Ireland. He was a distinguished member of the California Court of Appeals for a number of years, and before that was a distinguished member of the Superior Court in San Mateo County, and is a lawyer of very considerable renown in the San Francisco Bay area. There are a number of judges who are members of the club and who remain members of the club.

Senator HEFLIN. I believe that is all. Thank you.

Senator METZENBAUM. Thank you. Senator Specter.

Senator SPECTER. Thank you, Mr. Chairman. Mr. Walker, aside from the issue about the club membership, this raises the broader question of your sensitivity, how you would perform as a Federal judge on issues of women's rights, blacks' rights, and equal opportunity. Moving away from the issue of the club membership for just a moment, could you describe some of your other activities which might bear on your sensitivity to women's rights, and the rights of blacks or other minorities?

Mr. WALKER. Yes, Senator Specter. I believe Senator Wilson has mentioned the Lawyers' Club resolution that I drafted with regard to club memberships and providing equal opportunities for women and minorities in private clubs.

Senator SPECTER. When was that drafted?

Mr. WALKER. That was, we decided to adopt that resolution, I believe, in November 1987.

Senator SPECTER. Had you been——

Mr. WALKER. November or December, Senator.

Senator SPECTER. Of 1987?

Mr. WALKER. 1987.

Senator SPECTER. Had you been nominated or under consideration for a judgeship at that time?

Mr. WALKER. I had not been nominated. I believe I had been interviewed in, I believe in September about the possibility of a nomination.

Senator SPECTER. Are there any activities along these lines prior to the time you anticipated becoming a Federal nominee for a Federal judgeship?

Mr. WALKER. Yes, and indeed, those are the ones that I mentioned to you, Senator Metzenbaum. The efforts going back to the 1970's with respect to women's membership and women's use of the club that Mr. Dawson has spoken about. The effort to try to sensitize the club and at least one of its employees to the harm created by the racially motivated remarks that were made. But on the broader issue of sensitivity to people's concerns and to persons who have not been lucky enough to have the full measure of the material things of life, Senator, I began serving in 1986 on the California Law Revision Commission at the appointment of Governor Deukmejian. That Commission is charged with the obligation of reform and revision of the laws of California, and since 1986 most of our efforts have been devoted to reform of the probate system.

And it has been my continuing effort to attempt to bring the probate system of California in line with the uniform probate code, to streamline and simplify those procedures.

Senator SPECTER. Are there issues in the probate code which bear on this bias issue, of women, and minorities?

Mr. WALKER. Well, there are with respect to the issue of providing opportunities for people. Most of the people who are affected adversely by the cumbersome and expensive procedures that we set up for the transfer of assets at death are people who have very limited means, people whose sole assets are the social security benefits which they may have, a pension plan or pension rights. By and large, the people who are hurt the most by the inability of our legal system efficiently and economically to deliver legal services are the disadvantaged and people of moderate means.

Senator SPECTER. What specifically did you seek to do to aid the disadvantaged in that respect?

Mr. WALKER. To simplify these procedures, to make the legal services in this regard available to them on a more economical basis.

Senator SPECTER. Did you succeed in that?

Mr. WALKER. To abolish the statutory attorney's fee and the statutory personal representative fee, which is a stumbling block to the prompt administration of these estates. We have a bill in the legislature to accomplish these objectives, Senator Specter. The bill has, I believe, passed one house. It got tied up in committee in the other house. These efforts have drawn very vigorous opposition from representatives of the State bar who fought it at every turn. We finally brought the state bar around. We are still suffering a great deal of opposition by the organized probate bar.

In addition, in this regard, Senator Specter, I have spoken out vigorously before the Lawyers' Club of San Francisco, which as Senator Wilson mentioned, is an organization composed primarily of lawyers in small firms and in solo practice. I have spoken out vigorously in that body in support of proposals which are pending in California for legal technicians to provide legal services in routine and simplified matter so that we can have legal services delivered to people on an economical basis.

Senator SPECTER. When did you speak out on that subject?

Mr. WALKER. This past year. This is a proposal which has been pending in the state bar and which is under active consideration at the present time. The organized bar, as a rule, is strenuously objecting to these changes, but I believe the needs of the people to have economical and efficient legal services is the overriding consideration, and we as lawyers have to speak out and we have to do what we can.

Senator SPECTER. Mr. Walker, did you do anything in this line prior to 1986?

Mr. WALKER. Yes.

Senator SPECTER. Could you specify that, please?

Mr. WALKER. Yes, Mr. Margolin testified in 1988, Senator, to the activities of the Lawyers' Club and our efforts to support legal services. I believe that was one of the specifics he mentioned.

Senator SPECTER. And you did that?

Mr. WALKER. Did that.

Senator SPECTER. When?

Mr. WALKER. I was president of the Lawyers' Club in 1986 to 1987, was on the board of the Lawyers' Club from the early 1980's until I was president.

Senator SPECTER. What I am looking for, Mr. Walker, would be any activities you had undertaken at an early date. Obviously I'd want whatever date is factually correct. When is the earliest time that you had some specific activity which would evidence your concern for minorities, women, et cetera?

Mr. WALKER. Well, this goes back then to the 1970's as exemplified by Mr. Dawson's letter into 1980 and the matters associated with the Lawyers' Club that Mr. ~~Margolin~~ testified about in——

Senator SPECTER. What happened in the 1970's?

Mr. WALKER. Mr. Dawson has written to this Committee with respect to my activities to open up the Olympic Club facilities and ultimately membership to women. And that goes back to the time that he was on the board of the club and was president of the club in the 1970's.

Senator SPECTER. I have seen his letter referring to your activities from 1975 to 1977. Anything beyond that in the 1970's, Mr. Walker?

Mr. WALKER. You mean in the 1960's?

Senator SPECTER. Well, in the 1970's or 1960's? Anything besides the activities that Mr. Dawson has referred to?

Mr. WALKER. Well, yes.

Senator SPECTER. In terms of your specific conduct in promoting women's rights or minority's rights?

Mr. WALKER. I was active in the Bar Association of San Francisco's Bridging the Gap Program, which is a program to help new lawyers establish, to bridge the gap between law school and practice, and we developed in the 1970's programs to encourage minority lawyers to participate in those programs and to learn how it is that they can develop business as lawyers and how they can get their practices established. We made specific efforts directed at minority lawyers who were then beginning to come out of law schools in significant numbers.

And I cannot, as I sit here, recall exactly when in the 1970's that I was involved in Senator Specter, but it goes back to the first years that I was practicing law in San Francisco, which began in 1972, and we continued that over a period of time.

Senator SPECTER. Mr. Walker, do you consider yourself to be a person who is sensitive to rights of women, minorities, blacks, and hispanics?

Mr. WALKER. I do, Senator, and I must say that the experiences of being a nominee over the past 2 years and having the criticisms leveled at me that have been leveled have caused me to do a good deal of soul searching in addition to that which I may have done before. And I am more sensitive now than I was certainly of the need for a Federal judge to conduct the courtrooms of the United States in a way which will manifest an appearance of fairness as well as to do fairness. And I think it is very important that the judges on the district courts and in the courts of appeal conduct themselves, both their personal lives and the way they conduct their courtrooms, in a way to ensure the parties and the litigants fairness and also to ensure that the parties and litigants and lawyers will come away with the appearance that they are getting a fair shake, that they are getting the law applied to the facts and not on the basis of extraneous racially motivated or sexist motivated impulses.

Senator SPECTER. Senator Thurmond often makes the point that the more power a person has, and the way he articulates it, the more courteous a person should be; in our system there is probably no one who has more power than a Federal judge. There is no position like that which carries the life tenure and the power that the Federal judges have. I think it is very important to focus on Senator Thurmond's admonition about being courteous, not arrogant and not taking too much view of oneself, because of the lifetime appointment, this would apply even with greater emphasis on minority rights——

Mr. WALKER. I certainly agree with that.

Senator SPECTER [continuing]. And women's rights. Let me ask you just very briefly about the other issue which is raised here and that is about this litigation involving the International Olympic Committee versus the San Francisco Arts and Athletics group. I have another commitment at 11 and cannot stay, but my staff will be here, and I will check the record, and regret that I cannot hear the other witnesses testify. But I would like to hear your own comments about that issue before I depart.

Mr. WALKER. Thank you, Senator Specter. As we were talking a moment ago, the function and duty of a judge is to be dispassionate and detached. That is obviously not the role of a lawyer, and my activities in representing that client, the U.S. Olympic Committee, and the other clients which I represented over the years, was to press their claims, to press their rights with vigor and with zeal, and I attempted to do so within the rules and within the law.

Now the charge which has been made is that I failed to take steps to remove a lien which my client has secured to enforce a judgment for attorney's fees, and yet the record of the hearing which we had in June shows conclusively that I took every reasonable measure which a lawyer would take under these circumstances. The subject of removal of that lien, Senator Specter, did not arise until January 1986 when I received a letter from the counsel for the defendant with regard to that subject.

By this time, the primary responsibility for the litigation had been transferred to Williams & Connolly in Washington, and I alerted that firm to the situation, and they took care of the matter. I heard nothing further on the matter of the lien until May of that year when I received a telephone call from the defendant's counsel inquiring about the lien. And I responded with a letter. I believe the date of that letter is May 28. And I told counsel that in our opinion what she needed to do and all she needed to do was to file a copy of the judgment of the Ninth Circuit Court of Appeals, which had vacated the amount of the attorney fee award. And as I am sure you know, Senator Specter, a lien has to be tied to a judgment in a specific amount.

And so if the amount of an award is set aside, you lose the effectiveness of the lien, and I expressed that to her. And I told her also that I would take such steps as she thought appropriate to express that view, the view which I was expressing. I heard nothing further on the subject from anyone until July when I received a letter from the same lawyer, Ms. Judy Baer, in which she said that she did not think that it was effective simply to file a copy of the judgment vacating the amount of the lien. She enclosed releases of lien and asked whether I would on behalf of my client sign those releases.

Naturally I sent copies of those releases to the client, secured his permission to sign the releases, which I did so and returned Ms. Baer's releases to her approximately a week after they were sent to me. There is absolutely nothing to this charge that I held out, that I refused to execute those liens until the death of the defendant or that I acted in any way to bring unhappiness to him or to any members of his family. It is simply not true. I was acting to protect the interests of my clients within the law and as I saw fit, and as a matter of fact, Senator, I think I bent over backwards under the circumstances to make accommodations in this situation.

Senator **Specter**. Thank you very much, Mr. Walker.

Senator **Metzenbaum**. I hope to conclude this hearing by 12. Thank you, Senator Spector.

Senator **Specter**. Thank you, Mr. Chairman.

Senator **Metzenbaum**. Senator Thurmond, I would ask you to be as brief as possible. These witnesses have come a long way, and I just must leave at 12 and nobody else is going to be around here to conduct the hearing if I am not here. So please be brief.

Senator **Thurmond**. Mr. Walker, I think you have been asked the questions I had in mind chiefly so I will try not to duplicate. So we can get the full background on the situation in the San Francisco area, are there other clubs in the area that are exclusively all male or all female which are comparable to the Olympic Club, and have these clubs also been named as a party to the lawsuit the city has filed?

Mr. **Walker**. There are other clubs, private clubs in the San Francisco area, Senator Thurmond, of very substantial members. I am aware of about six clubs with all male memberships, and I believe three or four clubs with all female memberships. It is my understanding that none of those clubs has been named as a defendant in the anti-discrimination lawsuit filed by the City and County of San Francisco. I am not personally and thoroughly familiar with the litigation, and I have not attempted to follow it closely, but it is my understanding that the Olympic Club is the only one of these clubs that has been sued.

Senator **Thurmond**. And we have a lot of witnesses here so if you will answer as briefly as you can the questions. Mr. Chairman, I am going to forego any further questions. I think the previous record brought out I am thoroughly satisfied this man is qualified. I am thoroughly satisfied you ought to be confirmed. So I am not going to ask you any more questions this time.

Senator **METZENBAUM**. Thank you very much, Senator Thurmond. I appreciate your consideration of the time element. Mr. Walker, there is one element that it seems to me you would want to bring to the committee's attention that you have not mentioned. The Save the Olympic Club Committee was a committee formed for what purpose?

Mr. **WALKER**. For the purpose of changing the bylaws.

Senator **METZENBAUM**. Changing the bylaws.

Mr. **WALKER**. For the purpose of changing the bylaws to permit women to become full voting members, full participating members in the club, in the Olympic Club. And this organization, it is an informal and loose group, but it is an informal group that was formed for that purpose, to circulate the petition which resulted in the January 1989 referendum, and which sent out mailings to the members.

Senator **METZENBAUM**. You were a member of the committee?

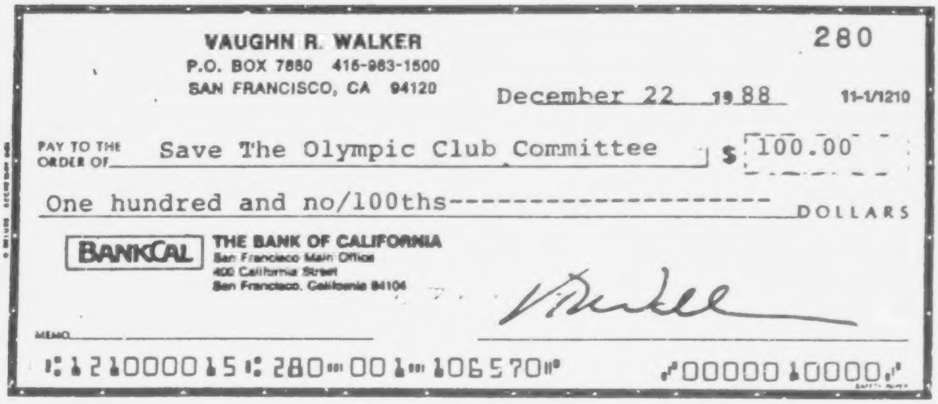
Mr. **WALKER**. I was a member and a financial supporter of the committee.

Senator **METZENBAUM**. And you contributed $100 to that committee?

Mr. **WALKER**. That is correct. Mr. Brown——

Senator **METZENBAUM**. And I will include in the record a xerox copy that we had asked you to bring with you of the check that was canceled and contributed to that committee. I think it is relevant testimony.

[Copy of canceled check follows:]



VAUGHN R. WALKER
P.O. BOX 7880 415-983-1500
SAN FRANCISCO, CA 94120

280

December 22 1988

11-1/1210

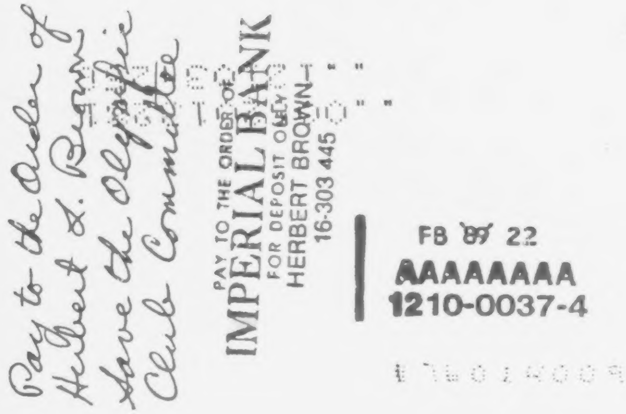
PAY TO THE ORDER OF Save The Olympic Club Committee $ 100.00

One hundred and no/100ths------------------- DOLLARS

BANKCAL
THE BANK OF CALIFORNIA
San Francisco Main Office
400 California Street
San Francisco, California 94104

MEMO

⑆121000015⑆ 280⑈001⑈106570⑈ ⑀0000010000⑀



Pay to the Order of
Herbert L. Brown
Save the Olympic
Club Committee

PAY TO THE ORDER OF
IMPERIAL BANK
FOR DEPOSIT ONLY
HERBERT BROWN
16-303 445

FB 89 22
AAAAAAAA
1210-0037-4

Mr. **Walker**. Yes, I received—let me just explain how this check came to be drafted and when it was drafted, Senator Metzenbaum. The committee was formed with the idea that we would send out mailings and circulate a petition, and nobody knew how much that was going to cost and what the effort would be. And Mr. Brown who was an accountant said, well, he will just send out a notice to people after expenses have been incurred, and we will just chip in.

And on December 20, I received a note asking for a contribution. I do not recall that it specified an amount, but these expenses had been incurred, and needed to be defrayed and so I responded then on December 22 with the $100 check for the committee debts.

Senator **Metzenbaum**. Were you involved in writing any of the materials urging the reform of the club's bylaws or performing any of the work undertaken by the group in connection with their efforts to change?

Mr. **Walker**. I did not write the petition nor did I write that mailing which went out. I did write the letter to the editor that I mentioned earlier that went out in July of last year.

Senator **Metzenbaum**. I think at this point I am going to excuse you but ask you to stand by in case it is necessary to come back to ask you some further questions.

Mr. **Walker**. I appreciate that, Senator Metzenbaum. I know that you want to get on, but I do not want to leave here without expressing to you and to the staff of the committee and to the other Senators my appreciation for your attention and the work that you have done on this, and particularly appreciation to Senator Wilson for his presence here today and for his stalwart participation through all 5 hours of the hearing in 1988. I am deeply gratified by that.

Senator **Metzenbaum**. Thank you very much, Mr. Walker. Our first panel, five persons, Louise Renne, city attorney of San Francisco; Terence Hallinan, member of the board of supervisors, city and county of San Francisco; Julianne Malveaux, Ph.D., president of Black Leadership Forum, San Francisco; Stephen Gillers, professor, New York University School of Law; and Thomas Bourke, Attorney, Riordan & McKenzie, Los Angeles, CA.

Now I understand that there is a dean here of one of the colleges, the Dean of the National Law Center at George Washington University, Washington, DC, Jack Friedenthal, who has to leave by 11:30. If you want to make a one sentence endorsement of Mr. Walker, we will be glad to hear from you. But we will not be willing to hear your entire testimony at this point.

STATEMENT OF JACK FRIEDENTHAL, DEAN, THE NATIONAL LAW CENTER, GEORGE WASHINGTON UNIVERSITY, WASHINGTON, DC

Mr. **Friedenthal**. Thank you very much, Senator, and I will try to get it into one long sentence. I was a professor at Stanford University for 30 years until I came a few months ago, 14 months ago, to be the dean at George Washington. I was asked—I did not know Vaughn Walker was up for a hearing. I was asked if I knew him, and what I knew about him because he had been a student at Stanford and I did know him, and because he and I had worked on a panel. He called me out of the blue one day to serve on a bar association as moderator of a panel on a major issue in California. We worked together. He did an excellent job of putting a fair panel together on a matter that involved the——

Senator **Metzenbaum**. I think your sentence ought to start to get to the punch line.

Mr. **Friedenthal**. I will get there real quick because I have to tell you what I know about the man.

Senator **Metzenbaum**. I am putting you on ahead of them so that you may leave.

Mr. **Friedenthal**. Fine. I understand.

Senator **Metzenbaum**. So make your statement and then leave.

Mr. **Friedenthal**. Well, the statement is simply this. That I know him, I know him. I know him well. I know his reputation, and in my opinion but that he should be confirmed. He is a citizen who is not—I have seen nothing that has shown any discrimination on his part except for this rather strange situation in which the committee has gone into with respect to the Olympic Club.

Senator **Metzenbaum**. Thank you very much.

Mr. **Friedenthal**. Thank you.

[The statement of Mr. Friedenthal follows:]

November 8, 1989

Senator Joseph R. Biden, Jr.
Chairman, Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, D.C. 20510

RE: Vaughn Walker, Nominee for a Federal Judgeship

Dear Senator Biden:

Recently I was asked whether or not I knew Vaughn Walker who was a student at Stanford University Law School, where I served as a professor for thirty years prior to my leaving to become the dean of the National Law Center at The George Washington University.

In part because Mr. Walker transferred to Stanford from Chicago, he was not in any of my classes and therefore I did not know him then as well as I knew some others. Nevertheless, I had contacts with him and knew him to be an able student. He graduated in 1970 and our paths crossed on numerous occasions thereafter, including alumni and Bar Association events. I was generally aware of his reputation as a lawyer for the Pillsbury firm in San Francisco and had heard nothing of a derogatory nature concerning his practice.

A few years ago, just prior to the well-publicized vote in California on the retention of Chief Justice Rose Bird, Mr. Walker called upon me to act as moderator of a panel to discuss the pros and cons of that issue. Mr. Walker set up the program, open to the general public, to assist people to make up their minds. He did not ask me about my own views but made it clear that he wanted a balanced, fair-minded presentation. He located the panel members, who provided an excellent analysis. Not only were they balanced on the pro and con issue, but they varied in their reasoning on each side. All rational views were covered and I was proud to have been asked to be involved. Given the emotional nature of the issue in the state, most such presentations tended to involve shrill, one-sided accounts. Mr. Walker deserves much credit for doing such an excellent job on such a vital matter.

Because it was difficult for me to understand how there could be any serious doubt that Mr. Walker should be confirmed, I asked to see the information that had been presented at the prior hearings and subsequently by letter. In response I received a bound copy of the Judiciary Committee Hearings, Part 7, Serial No. J-100-8, dated April 28, June 13, 22, and 29, 1988 (hereinafter "Hearings") plus certain letters received subsequently by the Committee or its members. I have read them in some detail with a growing sense of concern over the manner and substance of the attacks on Mr. Walker's character. Leaving aside for the moment the issue of his membership in the San Francisco Olympic Club, I am dismayed at the bitter denunciations of Mr. Walker by a small group of attorneys who have opposed him in litigation. There is a growing tendency to treat the attorneys for litigants as if they are the litigants themselves and to ignore the obligation of lawyers to serve their clients honorably and to the very best of their ability. Moreover, and more serious, is the tendency to attack counsel for not having done what the opponents had wanted them to do in the interests of the latters' clients. I admit that I am sensitive to these issues because I have recently been personally attacked in the press for having represented "someone" (my client has virtually been unmentioned) against a popular client. Although the integrity of my representation has never been questioned, the fact that I had "dared" to take on the case was used by several prominent individuals to inform the Stanford Law School that they would no longer make donations to the school unless I was forced to withdraw.

Despite numerous protestations to the contrary, (see, e.g., Hearings pp. 407, 458) it appears to me that the basic core of the opposition to Mr. Walker results from the fact that he represented the U.S. Olympic Committee in the so-called gay Olympics case. Defeat of his nomination, justifiable or not, will appear to be punishment for his having "dared" to present the case. In a situation in which low federal judicial salaries already restrict the pool of willing nominees, we hardly need to exclude others because they have taken on unpopular clients or causes.

To avoid the obvious objections to opposition based upon the mere acceptance of the gay Olympics case, opponents have done their best to construct an argument based upon the improper conduct of Mr. Walker in handling the matter. I have taught Civil Procedure for over thirty years and Evidence for nearly that long. I have been a member of the California Bar since 1959 and have tried to appear in a number of cases each year, because I feel that that makes me a better teacher. From my experience, there is no major protracted litigation anywhere in which one lawyer, after the case has been completed, could not go back into the record to find fault with the tactics of his or her opposing counsel. Lawyers tend to recall phone conversations and oral comments with their own biases in mind; failed arguments become "fraudulent" ones; and various actions, of little importance at the time, become "punitive" or "dishonest" practices.

It is in this context that Mr. Walker's failure voluntarily to remove a lien on Dr. Waddell's property earlier than he did so is hardly a ground for rejecting his nomination. Attorneys place various liens on property all the time to preserve the interests of their clients. In California a lis pendens is virtually a formal part of every case involving title to realty. Once such a lien is properly placed (and I have seen no argument that it was not properly placed), then it is up to the attorney who wants it removed to take the proper steps to have it removed if formal removal proves necessary or useful. There is neither a duty nor an obligation of the party who placed it to have it removed. As a matter of fact, in the particular case, once the appellate court had eliminated the obligation to which the lien had attached, the lien had no legal force or effect, other than the psychological effect on potential buyers who did not have sound legal advice.

If the existence of the lien did in fact effect the potential sale or other transfer of the property (and there is no statement that it did), then the owner's attorney could have appeared in court to remove it. The only reason given why the owner did not go to court to remove it in the gay Olympics case is summarized by his attorney as follows: "Judge Vukasin is a demonstrably homophobic person, who I am firmly persuaded wanted to hurt my clients." (Hearings, p. 493) Note the similarity of the statement by that same attorney, Mary C. Dunlap, in describing Mr. Walker: "I personally believe that Mr. Walker's entire position in this litigation, in behalf of USOC and IOC, is homophobic and anti-gay." (Hearings, p. 520)

Mary Dunlap is an attorney whom I know and respect, but she does represent a point of view that may color her objectivity when discussing Vaughn Walker and his handling of the gay Olympics case.

The same type of analysis applies equally to the Spendthrift Farms Security Litigation that is the subject of a letter, dated October 19, 1989, from Thomas K. Bourke, of the law firm of Riordan & McKinzie, to Senator Biden. Mr. Bourke represented a client on the other side of the case from Mr. Walker. Mr. Bourke's client prevailed in the action on a summary judgment, which means, of course, that he did not have to go to trial. According to Mr. Bourke, Mr. Walker is not worthy of being confirmed because Mr. Walker refused Mr. Bourke's request to dismiss the case on the ground that it was "weak" and refused Mr. Bourke's demand to make a timely and reasonable settlement offer. If refusing the opposing party's demands of that type were grounds for rejecting a nominee, no litigator would ever be confirmed. But Mr. Bourke goes on to note that his client won on summary judgment because "no reasonable jury could have found these defendants guilty of wrongdoing on any theory by any plaintiff." What Mr. Bourke fails to note is that that is the standard for all cases of summary judgment. Summary judgments are granted all the time by the courts. Does that mean that the attorneys who file any of those cases should therefore be barred from serving as federal judges? As any litigating lawyer well knows, a lawyer is not guilty of unethical conduct merely because it eventually appears that he cannot produce sufficient evidence to support allegations, so long as his allegations were made in good faith. The very purpose of the discovery process is to allow an attorney to try to obtain evidence to support a claim filed in good faith. Note that it is significant that Mr. Bourke never states that the claim was not filed in good faith or that there was no chance that Mr. Walker's client could prevail. His very claim was that the case was "weak," not fraudulent, and that his client was willing to settle.

I have no doubt that Mr. Bourke feels justifiably aggrieved because he could not do more for his client by getting him out of the case with less expense. But Mr. Walker is required to represent his client to the fullest extent possible; there is no indication that his client was willing to offer a settlement that Mr. Bourke's client would have found acceptable or that Mr. Walker's client would allow Mr. Walker to drop the action so long as there was a possibility of victory. Mr. Walker has no right to do that on his own! It is somewhat sad that out of a bitterly fought case, which resulted in unpleasant confrontations between opposing lawyers, one lawyer would testify against another's nomination to the bench. In his letter, Mr. Bourke said that "Mr. Walker does not get mad, he gets even." I find nothing whatsoever in the letter to demonstrate that that is the case. If anyone is "getting even," it would appear to be Mr. Bourke.

Finally, I would like to comment on the charge that Mr. Walker is biased against women. In her testimony against Mr. Walker, Ms. Abby Ginzburg, who took the lead on this issue in the opposition testimony, was asked, flat out, if she was aware of any incidents of discrimination against women by Mr. Walker. Her response was telling, "I have not personally either experienced or heard of an individual act of personal bias." (Hearings, p. 490) The sole basis for a claim of bias was based on Mr. Walker's membership in the Olympic Club, a club that does not provide full membership rights to women. Mr. Walker had been a member of that club for many years as had many others. Had he joined in later years when the issue of gender bias became visible, many of us, including myself, would be very upset with this nomination. But it is difficult to argue that the same standards apply to one who has belonged for years and who has taken steps to remedy the wrongs of discrimination from within. I believe that a federal judge, upon confirmation, must not continue to belong to organizations that continue to follow policies of discrimination. I have been led to believe that Mr. Walker has made an honest effort to induce the Olympic Club to alter its rules in that regard and failed. Upon failing, he resigned. Absent actual bias on his part, he has done no wrong.

For the record I have attached a copy of my resume. I would like to add that I have consistently championed the rights of individuals who have been unjustly attacked or condemned because of their stance on an issue or their honest efforts on behalf of clients. I strongly believe in, and have inaugurated and supported, programs to provide legal services to those who cannot otherwise afford them. I have championed the rights of all citizens to equal treatment and equal justice. I have spoken out against discrimination against women in law and, until I left for the District of Columbia, I served on a committee appointed by the Chief Justice of California to study the extent of such discrimination and the ways it might be stopped. I have supported the rights of gay men and lesbian women to equal treatment and have assisted them to attend and graduate from law school and to enter the legal profession. As admissions officer at Stanford Law School for four straight years I was proud of my record as to the admission of all individuals on the merits, without discrimination. My attitude and actions have not changed since I gave up that job to become Associate Dean at Stanford Law School and Dean at the law school at George Washington. When I arrived in Washington, I specifically and openly refused to join any club that did not admit all types of people because of race, gender, etc. I would not support the nomination of Vaughn Walker if I believed him to be biased or to be a person who would callously disregard the rights of any individual who might appear before him in federal court.

Very sincerely yours,

Jack H

Jack H. Friedenthal

P.S. It should be made clear that my views, as stated above, are mine alone and do not reflect any official position of Stanford University, George Washington University, or any other person.

Senator METZENBAUM. I have talked with the ranking member of the committee, Senator Thurmond. We both agree that it would be unfair to hear only the pro witnesses and not the negative witnesses. Excuse me. You all are all the negative witnesses, I think, you are the opposition. We are going to ask you to confine your remarks to 3 minutes so we might have a couple minutes for questions. We appreciate your coming all that distance and now we feel embarrassed about limiting time, but I do not know that I have any choice. We will put your entire statement in the record.

Ms. Renne.

STATEMENTS OF A PANEL, CONSISTING OF LOUISE RENNE, CITY ATTORNEY, SAN FRANCISCO, CA; TERENCE HALLINAN, MEMBER, BOARD OF SUPERVISORS, CITY AND COUNTY OF SAN FRANCISCO, SAN FRANCISCO, CA; JULIANNE MALVEAUX, PH.D., PRESIDENT, BLACK LEADERSHIP FORUM, SAN FRANCISCO, CA; STEPHEN GILLERS, PROFESSOR, NEW YORK UNIVERSITY SCHOOL OF LAW, NEW YORK, NY; AND THOMAS BOURKE, ATTORNEY, RIORDAN & MCKENZIE, SAN FRANCISCO, CA

Ms. RENNE. Yes, thank you, Mr. Chairman, and members of the committee. I appreciate your courtesy, first of all, in delaying this matter because of the earthquake in San Francisco. We are coming along on that, I must say. I also want to say at the outset, in the spirit of full disclosure, two things. First of all, my husband to whom reference was made already by Senator Simpson was a counsel in the *Spendthrift* case which has been the subject of some written testimony to this committee. He has never commented on that case publicly, and I do not intend to either.

Second, reference was made to the fact that my husband belongs to clubs. Again, I would simply say that I would expect him as well as any other person to come before this committee to be treated and subject to the very same standards that this committee is exercising in this matter. I am here today, however, at the invitation of this committee to let you know what the Olympic Club case is all about. I want to say at the outset that for a city attorney of a major community like San Francisco to come before this committee is an undertaking which I do not take lightly, and indeed, I do so not only because of the invitation of this committee, but I made the decision to accept that invitation after, after I read the testimony of Mr. Walker before this committee earlier.

Why? Because I do not believe Mr. Walker's description of that litigation has been candid or forthright, and secondly, because I think his statements to this committee about his activities in actively trying to change the situation in the Olympic Club again are not accurate. My written testimony contains much of the litigation history concerning the Olympic Club. Suffice it to say that we have a very large club of 4,700 active members, 4,000 inactive members, that have been a large and active part of the business and civic establishment in San Francisco. Indeed, the club rents property from the city and county of San Francisco.

When the question came up as to whether or not a private club which discriminates against women and minorities and uses public property with extensive business communities came up, whether or not it was legal for such a club to discriminate, it seemed to me, a city attorney, that the answer was very definitely no. We sought voluntary compliance with the law. That was not forthcoming. Indeed, if you take a look at the history of the club, you will find that contrary to Mr. Walker's testimony that there has been no invidious discrimination against blacks, for example, that as a matter of fact, in 1968 this club had an expressed bylaw against admission of blacks and as a matter of fact, no black members were ever admitted to the Olympic Club. No black members were ever admitted to the Olympic Club until after our lawsuit and on the day of the first, one of the first major hearing, the local newspaper announced that two black members had been admitted to the club.

Rather than evidencing any change at all, the club has consistently, consistently sought to fight our lawsuit at every step of the way.

Senator METZENBAUM. Was Mr. Walker involved in fighting the lawsuit or to what extent did he participate; do you know?

Ms. RENNE. I cannot say that—frankly, Senator Metzenbaum, in response to your question I cannot say that Mr. Walker was involved in fighting the lawsuit. As far as I know, Mr. Walker did not actively participate certainly in club discussions. He has testified that he may have signed a petition. He may. I have not seen it. He has testified that he signed a check and he may have.

Senator METZENBAUM. Well, I knew that there was that testimony. So I asked for a copy of the cancelled check which I have, and I would just like to get your view about the fact that he contributed the $100 to the Save the Olympic Committee in December of 1988, whether that in your opinion indicates some support for changing the club's rules and indicates the state of mind of Mr. Walker?

Ms. RENNE. I think it was a matter of convenience, Senator Metzenbaum. I think that Mr. Walker has not been candid with the committee in terms of the activities he has undertaken. Indeed, as my written testimony indicated, at one point while his nomination was before this committee, he sent me a letter, and I believe that letter is part of the history of this committee.

In the letter he indicated that he thought that things had changed. That there was a chance for progress. I wrote him back and said that indeed I thought it was completely the opposite way. That as the litigation had progressed, the club's attitude had hardened. He then responded to me that he had sent a letter to the Olympian and had taken advantage of the opportunity to express views in the Olympian. In fact, as I believe the files of this committee show, that letter certainly was not dated until at least 10 days after he had said that to me, and to my knowledge, it was certainly never published.

Senator METZENBAUM. Thank you.

Ms. RENNE. I just want to say one more thing, Senator, and it is not part of my written testimony. But during the course of this hearing, Mr. Walker has indicated, for example, that Mr. David Dawson has been active in trying to change the attitudes of the club, particularly insofar as women are concerned. Let me cite you one specific example of why I do not think this is so at all. There is a woman attorney in San Francisco who did apply for membership.

Her father had played tennis at the Olympic Club. She had played tennis there which unmarried daughters can do.

Her father died. She sought membership in her own right. She had the requisite recommendations, there was every reason but for the fact that she was a woman why she ought to have been admitted. During the course of discovery, Mr. Dawson was asked about this particular situation. His response was she is just, women are non-entity. That was the word used to describe women applicants, a non-entity.

Senator METZENBAUM. Well, Mr. Dawson is not up for confirmation.

Ms. RENNE. I understand that, but I give that as an example, as an example, of the attitude of the club and how they view. The point is that Mr. Dawson is being used as an example of a change in attitude on the part of the club, and yet precisely the opposite seems to be the case.

Senator METZENBAUM. Thank you very much, Ms. Renne. Mr. Hallinan.

Ms. RENNE. May I just say one more thing, Senator, because again, and I ask for the time. When I called Mr. Walker to tell him—because I think it gets to the point, too, and is relevant to these confirmation hearings—when I called Mr. Walker to tell him that I was coming here to testify, his immediate response to me was, well, I think you will be sorry. I do not know if that was intended to be a threat. I hope not. But when I hung that phone up, I thought to myself, at the very least this was an inappropriate statement and certainly not the kind of response that we ought to have for anybody being considered for a lifetime appointment to a Federal District Court Judge.

Senator METZENBAUM. I would agree if that was the statement that was made it would seem to me to be inappropriate.

[The statement of Ms. Renne follows:]

TESTIMONY OF SAN FRANCISCO CITY ATTORNEY
LOUISE H. RENNE
NOVEMBER 9, 1989
BEFORE
THE UNITED STATES SENATE JUDICIARY COMMITTEE
CONFIRMATION HEARING ON
VAUGHN WALKER

Mr. Chairman, members of the Committee. My name is Louise Renne and I am the City Attorney of San Francisco. Before I begin my remarks this afternoon, I would like to thank the members of the Committee for their sensitivity in delaying this hearing for two weeks on account of the earthquake in northern California. I am happy to report that while it will take some time to rebuild, our spirits are quickly mending.

For the record, I have held elective office in San Francisco for over ten years, serving on the Board of Supervisors from 1978 until 1986 when I became the City Attorney. Prior to holding office, I was a Deputy Attorney General for the state of California. I have served as a member of the Board of Directors of the San Francisco Bar Association and am a past president of California Women Lawyers.

I was asked to appear here today because of my knowledge of the Olympic Club litigation, formally known as City and County of San Francisco and People of the State of California v. The Olympic Club. As I am sure you can appreciate, there are many reasons why a City Attorney whose office handles over 10,000 cases a year might decide against participating in a confirmation hearing on a nominee for a federal judgeship. However, in considering whether I had information of value to the deliberations of the Committee, I reviewed the transcript of the June 13, 1988 hearing on Vaughn Walker's nomination. It was at that point that I decided to appear today.

I believe that Mr. Walker seriously misled this Committee in his descriptions and representations relating to the Olympic Club, its history of discrimination and its current posture toward the admission of minorities and women. Furthermore, I believe Mr. Walker went far beyond casting the best light on the facts when he stated that he took an active role in encouraging change within the Olympic Club.

Since my comments regarding Mr. Walker's representations before this Committee are based on my knowledge of the Olympic Club through my participation in the lawsuit, I would like to give the Committee a brief history of the club and a synopsis of the suit.

The Olympic Club

The Olympic Club was founded in 1860. It is a large social and athletic club located in San Francisco with an active membership of roughly 4,700. Inactive members number approximately 4,000.

The club owns and operates dining and athletic facilities downtown and maintains a country club with a world famous golf course at Lakeside, San Francisco. Approximately 17.5 acres, comprising three holes of the golf course, is under lease to the Club from the City.

The Olympic Club is also a major business in San Francisco: it issued public bonds to finance its capital expansion; the club took in more than $3 million when it hosted the US Open golf tournament in 1987; the club leases land on which the Portman Hotel operates. The Club employs several hundred people involved in housekeeping, food service, bartending, maintenance, accounting, data processing, massage, hair cutting, pro shop operation and management.

Olympic Club members realize important commercial and professional benefits from contacts with members and guests at the facilities. Club facilities are available and frequently used for business meetings and professional banquets. Members are encouraged to take advantage of their affiliation with the Club to solicit business from other members and guests. The pages of Olympic Club publications are filled with advertisements by members seeking business from other members. Local companies and national corporations reimburse dues and expenses incurred by their employees at the Club.

Until 1968, the bylaws of the Olympic Club specifically restricted membership to "only white male citizens of the United States of good, moral character, integrity and reputation." In 1968, the formal racial ban was dropped, but for the next twenty years, no blacks were admitted. The express ban on women members continues to this day. Simply stated, there are a host of business opportunities available to the literally thousands of Olympic Club members from which minorities and women are excluded. This exclusion is exercised in both policy and practice.

In June, 1987, I wrote a letter to the club warning that its membership policies violated state anti-discrimination law. I urged voluntary compliance. Following negotiations with my office, the Club's board of directors adopted a proposal to accelerate membership for women and minorities and submitted it to the membership for consideration. Justice Anthony Kennedy, then a judge on the 9th Circuit Court of Appeal and a member of the Olympic Club, wrote to the Club's legal committee urging adoption of the changes. On October 7th, the membership rejected the proposals by a vote of 2,082 to 1,540. At that time, Justice Kennedy among other members resigned from the club.

State of California and City of San Francisco v. The Olympic Club

In November, 1987, I filed suit on behalf of the People of the State of California and the City of San Francisco against the Olympic Club, charging it with discrimination against minorities and women. The complaint alleges violations of the Unruh Civil Rights Act , which prohibits discrimination on the basis of race and gender in all business establishments. The complaint also alleges that the club's violation of state law constitutes a breach of the city lease of 17.5 acres to the club for its golf course. Earlier in 1987, the U.S. Supreme Court unanimously upheld the application of the Unruh Act to private clubs. Board of Directors of Rotary International v. Rotary Club of Duarte, 479 U.S. 929, 107 S. Ct. 1940 (1987).

Rather than contest the lawsuit on the merits, the Club launched an offensive against the City. Four days before your last hearing on the Walker nomination, the club filed a cross complaint alleging that the City's effort to stop discrimination was a malicious breach of the lease and violated the covenant of good faith and fair dealing. The court dismissed the complaint. The club attempted to depose me. The court granted a protective order. More recently, the Club attempted to stop our discovery of whether private employers had paid Club dues. The Court ordered the discovery. The Club has refused every effort at discovery, forcing the City into Court for orders against the Club.

Between fall of 1988 and winter of 1989, my office refrained from pursuing the litigation on the representation that there was interest in a negotiated settlement. A group of members again raised the by-laws change which would admit women. The Board formally opposed the initiative and the membership again voted it down.

In February of this year, I filed another lawsuit against the club alleging violation of a new city ordinance that prohibits discrimination by clubs which are not "distinctly private". The ordinance is modeled on the New York City law that was unanimously upheld by the U.S. Supreme Court in *New York Club Association v. City of New York*, 487 U.S. ____, 108 S. Ct. 2225 (1988). The cases have now been consolidated and we are in the discovery phase of the litigation.

Vaughn Walker's Testimony

In light of this history, I read with interest the testimony which Mr. Walker gave to this committee last year. I would like to set the record straight in the following respects.

Mr. Walker testified that "the situation is changing" at the club with regard to the admission of minorities and women, that membership for women was rejected by a "very close vote" and that discussions were under way with a woman's athletic club which might solve the problem. (Tr. 37-38)

First, nothing has changed at the Olympic Club regarding the admission of women -- there was no change between June of 1987 and June of 1988, and there has been none since. The Club did not institute an "accelerated" membership policy for black applicants, as was represented to you. The Club itself, in its publications, denies any special preference in admission. On the advice of counsel, the Board did admit two black members. Announcement of this action appeared in the local newspaper on the day of the first major hearing in our lawsuit. This is the most recent data we have from the club on the admission of black members.

Contrary to Mr. Walker's claims of progress, the club has attempted to protect the status quo, not to change it. In June of 1988, the club announced that it was taking steps to "privatize" its transactions. The club stated that it would no longer accept payments by non-members or cash or credit card transactions by members; dues and charges would have to be paid by personal check. Of course, members remain free to conduct business at the Club and deduct their expenses or receive reimbursement. Clearly, these efforts to conceal the Club's method of doing business were designed to shield the club from the reach of law that could bring about progress.

Second, I do not believe that a 57/43 percentage vote is a close one: 2,082 members voted not to extend membership to women, while only 1,540 did. Over the past two and one half years of this controversy, my office has never received any information suggesting that a merger or accommodation with any women's athletic club was under serious discussion. As I stated earlier, our office held off pursuing the litigation on the representation that there was interest in seeking a negotiated settlement. Had any real effort been made to merge with a women's club, I believe that my office would have been informed.

Mr. Walker testified that "in the past, there had been no formal exclusion of blacks" at the Olympic Club. (Tr. 38) He testified that the Olympic Club practices no invidious discrimination (Tr. 39) and that the issue of the exclusion of blacks "has been a matter which has bothered me over a period of years". (Tr. 40)

For over one hundred years the club had an explicit rule excluding blacks. That language was amended in 1968. Only in 1988, in response to the city's lawsuit, did the club finally admit two black members. I know of no initiative taken by Mr. Walker to assist in the admission of those gentlemen or to increase the number of black members beyond tokenism. If Mr. Walker found the exclusion of minorities troubling, his public silence is particularly puzzling. One is left to wonder why he did so little about it.

Mr. Walker testified that he took an active part "advocating that women's rights be recognized". (Tr. 48)

Indeed, since the issue was first raised, there have been many opportunities to be such an advocate. A number of attorney members of the Olympic Club circulated legal opinions opposing the admission of women when their membership was first considered in 1987. These memoranda argued that there was no legal basis upon which the club could be required to admit women. Mr. Walker never countered these with opposing authority.

Some members sent letters to the legal committee of the club urging adoption of the proposed by-law amendment to admit women, among them Justice Kennedy. Mr. Walker sent no such letter. Other members spoke out at meetings to support the change. To my knowledge, Mr. Walker did not attend the club board meeting at which the admission of women was discussed, nor did he attend the general membership meeting to speak on behalf of change. Only after he testified here in June of 1988 did he write a letter to the Club newspaper advocating change -- a letter which was never published.

In fact, I believe that letter is of particular interest and is significant in gauging Mr. Walker's candor on the issue. A week or so following your hearing in June, 1988, I received an unsolicited letter from Mr. Walker, a copy of which I have made available to the Committee. In that letter he stated that he was "sure that the Olympic Club was moving in the right direction". In my reply I commented that from my vantage point, the Club position seemed to have hardened and I inquired whether Mr. Walker knew something that I did not.

In a letter of July 8, 1988, continuing the correspondence, he noted that "several persons of minority background have quietly been elected to membership" and he said that the club magazine had been made available to express views on the membership issue. "I, for one, have taken advantage of that opportunity," he wrote. Mr. Walker's letter to the editor is dated ten days later than the one he sent me and it was never published.

Mr. Walker has stated before this Committee and in his spontaneous correspondence with me that he believed it was important to work within the club. Yet, there is no evidence that Mr. Walker ever did anything to influence the direction of the Olympic Club on this issue -- other than to create a private, paper record of his good intentions. As to any public action, he may have signed a petition or written a check, but these actions hardly rise to the level of advocacy.

The difference between Mr. Walker's testimony and the facts as I know them suggests his fundamental ambivalence about the policies of the Olympic Club. Nowhere is that ambivalence more clearly demonstrated than in his letter of resignation, submitted one week before he was renominated. In particular, I would draw your attention to the following observation on page 2:

> "Although some progress toward full membership status for women has been made, it seems clear that at the moment a majority of the Club members feel that the City and County of San Francisco's lawsuit against the Club precludes the Club at this time from changing its restrictions against full membership participation by women."

If Vaughn Walker believed that the membership policy of the Olympic Club was wrong, why did he lend validity to so lame a rationalization for continuing discrimination? I find it extraordinary that a nominee for the federal bench would suggest that a lawsuit brought to abolish discrimination was responsible for prolonging it. In fact, the only concession to progress made by the Olympic Club -- the expedited admission of two black members--came as a direct result of the lawsuit. To attribute the intransigence of the Club on the admission of women to the litigation suggests neither the honesty nor the courage this Committee should demand of prospective federal judges.

Thank you.

Senator METZENBAUM. Mr. Hallinan.

STATEMENT OF MR. HALLINAN

Mr. HALLINAN. Thank you, Senator Metzenbaum. I hope in light of the time factor, you will excuse me for dispensing with telling you how honored I am to appear before all of you as representative of the largest city in the Northern District of California and how our board of supervisors has twice gone on record now opposing this nomination, and it is not a position that we have taken lightly, but one that we have done after hearings, after thought, after much input from the community, from other lawyers and from other individuals.

And that opposition has been based basically on three factors. The first is the one that you have been talking about: his membership, long-time membership in the San Francisco Olympic Club, a club that occupies a special position in the city and county of San Francisco, and a club which in 1966 it came to the public attention that for over a hundred years, the club had a bylaw limiting membership to white males only. As a result of that publicity in February of 1967, I wrote, filed a complaint, with the Alcoholic Beverage Control Board, demanded that their liquor license be taken away. There were hearings. The Olympic Club defended itself, refused to at least publicly acknowledge that it was wrong. And the Alcoholic Beverage Control Board ruled that although they would take licenses away from private individual companies for doing that, they would not against a club.

Subsequently, I understand in 1968 the club took the white part out, although no blacks were actually admitted.

Senator METZENBAUM. Mr. Hallinan, I think it is given that the club has had a discriminatory membership policy.

Mr. HALLINAN. Yes.

Senator METZENBAUM. But the club is not up for confirmation. I would like you to address yourself to Mr. Walker because that is really what we have to——

Mr. HALLINAN. Yes, I was getting to that. In other words, what I was trying to say is this is an invidious discrimination. It is not something that nobody knew about. The whole city knew about the factor, the fact that this was a whites only club and it was well publicized, and it had been in and out of the courts. Likewise, when the women issue came up, other clubs such as the Concordia Club took votes and overwhelmingly voted to change their constitutions to take that out. The Olympic Club refused to do so and made a strong point of it and took a public position that they would refuse to admit women to full membership in the club.

And I am making that point in relationship, I think, to what Senator Simpson——

Senator METZENBAUM. But I am still having difficulty. I am trying to get you to the point. The question is what did Mr. Walker do? He claims that he tried to change the rules and stayed in the club. This Senator has said publicly that I supported a judicial appointment who changed, who tried to change the rules of a club, and I think that is what a member ought to be doing. He claims that he did that. And my question is what do the board of supervisors feel about Mr. Walker vis-a-vis his conduct?

Mr. HALLINAN. The board of supervisors feels that he joined a club which was known to be a club limited to white males only. That he remained in that club for many years after it had become—we are talking about 2 or 3 years back at least that this was a heated issue, and back in the 1960's that the racial part was heated, and he remained in that club, and he did not withdraw from that club. And he did not take the steps to protest it, to demand an election until he was actually appearing before this commission to determine whether he should not be a judge, or whether he should or should not be a judge.

He was not a person who was taking a leading position in trying to obtain fairness for women and minorities in the city and county of San Francisco. The second factor, which we——

Senator METZENBAUM. Your time is about up. I will give you 1 minute more.

Mr. HALLINAN. All right. The second factor which we based our opposition on, and I think it is important and goes in line with you—and I have been a lawyer practicing for 25 years in the courts of California. I know many Republicans and conservatives——

Senator METZENBAUM. The point, Mr. Hallinan, the second point.

Mr. HALLINAN. Is that we do not feel his conduct in cases such as the Gay Olympics, such as the case having to do with the horses, his, what I consider threats to this city attorney of retaliation evidences the kind of temperament that would make for a courteous, fair-minded judge who you would like to appear before. And I think that is really what you gentlemen are going to have to consider. Is this the kind of man that you want to give the tremendous power that a Federal District Judge has that he will treat litigants courteously, that he will be fair and open-minded. Whether he is conservative or not does not matter. It is that he is a fair, open-minded, courteous person.

Senator METZENBAUM. Thank you, Mr. Hallinan.

[The statement of Mr. Hallinan follows:]

TESTIMONY OF TERENCE HALLINAN, MEMBER
BOARD OF SUPERVISORS OF THE CITY AND COUNTY OF SAN FRANCISCO
BEFORE THE SENATE JUDICIARY COMMITTEE
NOVEMBER 9, 1989

Mr. Chairman and distinguished members of the Committee, it is an honor to appear before you on behalf of the Board of Supervisors of the City and County of San Francisco, the governing body of the largest city within the Northern District of California. Our Board is charged with the responsibility of enacting laws in the best interests of the people of San Francisco, and it is in what we feel to be the best interests of our community that I and my colleagues have spoken out against the judicial nomination of Vaughn Walker.

Our decision to say something about this nomination was neither easy nor arrived at lightly. However, after considering the concerns expressed by numerous members of the San Francisco bar, community groups and other individuals, we felt that we had to take a stand: We do not believe that Mr. Walker should sit in judgment on the rights and liberties of our citizens.

In February of 1988, our Board passed a resolution opposing the nomination of Mr. Walker. In June of this year, after extensive hearings, we reaffirmed that opposition in a letter to this Committee.

Let me briefly state the reasons.

First, for over fourteen years -- and throughout his first nomination -- Mr. Walker remained a member of the Olympic Club, an organization which is notorious in San Francisco for having had a constitution limiting membership to "white males" only until as late as 1985. Although the whites only provision was repealed at that time, the club continues to discriminate against women, despite a lawsuit by the city, threatened financial penalties and several clear decisions by the U.S. Supreme Court. Last year, before this Committee, Mr. Walker defended the Club's progress in opening its doors, while it was actually sealing them shut to women. His statements showed either a failure to gather the real facts before testifying or an insensitivity to the significance of the issue. Neither reflects attributes suitable for a judge. Moreover, we believe that Mr. Walker's resignation from the Olympic Club in February of this year -- one week before President Bush announced his second nomination -- was merely a contrivance to diffuse the issue. The bottom line is that at the time he joined the Club and during many years of his membership it was a whites only club and women are still barred from membership.

Second, when considering whether to oppose this nomination, we heard numerous complaints by attorneys as well as the public which raised questions about Mr. Walker's litigation practices and his temperament. We believe that he went beyond the bounds of necessity and decency in the case of International Olympic Committee v. San Francisco Arts & Athletics. We do not oppose Mr. Walker because he represented the Olympic Committee in the case, but because of the way he handled the litigation surrounding his attorney fees. After prevailing on the legal points, Mr. Walker obtained an attorney's fee award of $96,000, and attached liens securing that award on the home of Dr. Thomas Waddell, a highly respected and beloved individual in our City, founder and director of the San Francisco Arts & Athletics. On appeal, the Ninth Circuit vacated the judgment awarding attorney fees. However, despite the appeals court decision, despite repeated requests from Dr. Waddell's attorney, and despite his knowing that Dr. Waddell was dying from AIDS, Mr. Walker refused to remove the lien. He told opposing counsel and this Committee last year that the Ninth Circuit's decision had automatically extinguished the lien. The Committee has since received a contrary opinion by a California legal expert on judgment and remedies and any attorney who has handled real property knows that is not true. The sad reality is that Dr. Waddell died without knowing whether his home and possessions would pass to his young daughter or be seized by Mr. Walker.

I understand that a local San Francisco attorney, Thomas Burke, has written this committee raising questions about Mr. Walker's litigation tactics and his temperament in a multi-million dollar securities case in which Mr. Walker served as the lead attorney. In that case, Mr. Walker filed suit against numerous defendants around the nation under federal and state laws. However, during the course of litigation, the judge dismissed all but two of the defendants. And those two were eventually cleared by a jury.

Finally, I and my colleagues on the Board were disturbed by Mr. Walker's lack of pro bono work. As you know, the American Bar Association and the California Bar Association both recommend that attorneys devote time to serving the disadvantaged. In his first questionnaire to this Committee, Mr. Walker was able to identify only one family for whom he has provided pro bono legal services. In a revised questionnaire Mr. Walker expanded his answer to include his work with the California Law Revision Commission, his membership on the board of directors for a theatre group, and some vague participation with the Junior Achievement of the Bay Area, Inc. Clearly, his notion of serving the disadvantaged is different from what I believe the bar associations meant and what I think this Committee looks for.

Mr. Chairman, I have been a member of the California bar for 25 years, and I know of hundreds of attorneys who are Republican, who are conservative, who work in large firms, and who are eminently qualified for a federal judgeship. I would gladly support them. I cannot support Mr. Walker. My opposition to his nomination has nothing to do with judicial philosophy. It has to do with fairmindedness, sensitivity, compassion and honesty. I do not see these attributes in Mr. Walker, and therefore, I have no confidence in his ability to be a fair and even minded judge.

Senator Alan Cranston has repeatedly stated his opposition to this nomination. Twenty-four members of the California delegation in the U.S. House of Representatives oppose the nomination. The Board of Supervisors of San Francisco has twice gone on the record opposing Mr. Walker's nomination. And finally, I assure you, the people of San Francisco have great concern and worry about this nomination. I urge your colleagues to listen to our collective voices and to reject the nomination of Vaughn Walker.

Senator METZENBAUM. Dr. Malveaux.

Senator WILSON. Mr. Chairman, if I might. I am going to have to go shortly. I wonder if you might indulge me. Perhaps I can just put these questions through the chair, and then I will have to depart. I have read the testimony of Professor Gillers. I wonder if I could put a question to him through the chair, one to Mr. Hallinan and Ms. Renne.

Senator METZENBAUM. If they are very brief, Senator. I have five more witnesses.

Senator WILSON. They will be very brief.

Senator METZENBAUM. And I want to be fair. If I hold this over, Senator Thurmond and you and everybody else is going to be jumping on my head.

Senator WILSON. All right. Let me be very brief then. My question to Professor Gillers is whether or not he had knowledge of any of those facts or events that have been elicited today? Whether he saw Mr. Dawson's letter to me; whether he was aware of Mr. Walker's efforts as president of the San Francisco Lawyers' Club in drafting the resolution against discrimination in private clubs; whether he was aware of Mr. Walker's efforts to organize and promote a second plebescite to admit women; whether he was aware of the contrast really in the records of Justice Kennedy and Mr. Walker; and if he had been aware, would he still have the same opinion? That would be the question to him.

Senator METZENBAUM. You can wait to answer that when you respond.

Senator WILSON. The question to Mr. Hallinan is whether or not it is not true that he lost his first attempt to be elected to the board of supervisors after Mr. Walker successfully opposed his law suit that sought to prevent the counting of certain absentee ballots in an election in 1980?

My question to Ms. Renne is whether or not she is acquainted with Jerome Braun? Is that the case?

Ms. RENNE. Jerry Braun who is an attorney in San Francisco? Yes.

Senator WILSON. My question would be whether or not she is aware that Mr. Braun had approached Mr. Walker to ask him to serve on a committee to support Ms. Renne's candidacy and to give money to her campaign?

Ms. RENNE. The answer is no, I am not aware of that.

Senator WILSON. I see. Well, I am advised that he did and that Mr. Walker declined both requests. [Laughter.]

Senator WILSON. Mr. Chairman, I would apologize. I am compelled to go to the floor for a time certain matter. I will return if possible, but I thank the chair for your courtesy.

Senator METZENBAUM. Thank you, Senator Wilson.

Mr. HALLINAN. And likewise, Senator, I have no awareness that he had any involvement in that case in which I was involved.

Senator METZENBAUM. Dr. Malveaux, may we hear from you.

STATEMENT OF DR. MALVEAUX

Dr. MALVEAUX. I want to thank you all, and I, like Terry, will dispense with the honored this and that, but I do want to thank you for hearing me today. It is very rare that the public in the manner that I come in would come to testify for a judicial hearing. I am representing thousands of individuals from 17 civil rights legal and community organizations including the San Francisco NAACP, the Black Leadership Forum, 500 civic and politically active black members, and I am former president of San Francisco Business and Professional Women, a group of people who is excluded from membership in the Olympic Club. My written testimony makes several points. I want to make just two in this limited time.

First of all, you have said that the Olympic Club is not up for confirmation, Mr. Walker is. Yet I think it is important to make a distinction between the way that Justice Kennedy and Mr. Walker have distanced themselves from the Olympic Club. Justice Kennedy publicly resigned at a time when the Olympic Club was in the headlines, when we were suing the Olympic Club, and made it clear and very publicly that he did not approve of exclusionary behavior. Mr. Walker, despite all of what I have heard today, did so quite privately. The Olympic Club for someone like me is someplace that I cannot go. And I cannot tell you how painful that exclusion is, not because of the association but because of the commerce that takes place there.

As a small business person representing small business people we cannot go and cut those deals, and we appreciate a justice who sees that and takes that matter public as opposed to private behind closed doors where after the fact people are trying to determine did it or did it not really happen. So I really would like to emphasize that point and refer you to my public testimony, my written testimony rather. The second point is the issue of public confidence and trust. Given the number of organizations in San Francisco that have gone on record, all of us are not politicians as Senator Simpson has said, many of us just want better lives for ourselves, our families, and our kids.

Given the number of 17 organizations, L'Rasa organizations, Asian organizations, women's organizations, and black organizations, who have said this man is unfit to serve because of his lack of compassion, professional judgment, and other things, we feel that the judiciary itself loses the public trust if this man is placed on the bench. And I would just implore you—and I apologize for talking fast but you say that we are running out of time——

Senator METZENBAUM. OK. [Laughter.]

Dr. MALVEAUX. I would just really implore you to look at this very carefully and to look at it from where I sit as a black woman, San Francisco native, who still sees apartheid in her own city.

Senator METZENBAUM. Thank you very much, Dr. Malveaux.

[The statement of Dr. Malveaux follows:]

TESTIMONY OF DR. JULIANNE MALVEAUX
BEFORE THE SENATE JUDICIARY COMMITTEE
November 9, 1989

Mr. Chairman and Distinguished Members of the Committee:

Good morning. My name is Dr. Julianne Malveaux, and I am a professor of Afro-American Studies at the University of California at Berkeley, and also President of the San Francisco Black Leadership Forum.

I am honored to appear before you today on behalf of numerous community-based organizations in Northern California who are united in opposition to the judicial nomination of Vaughn R. Walker to the federal court for the Northern District of California. We are grateful to you, Mr. Chairman, for making sure that citizen comments on this lifetime judicial appointment will be heard.

As citizens who care deeply about the quality and integrity of our federal judiciary, we take seriously any duty to contribute to a full evaluation of this nominee, and to place in context the effect Mr. Walker's appointment will have on our community.

We request that this Committee reject the Walker nomination so that a truly exceptional individual may be selected to give our court the respect and confidence of citizens. United in our opposition to the nomination of Mr. Walker, we come as individuals and through community groups, including the NAACP-San Francisco, Black Leadership Forum, Black Women Lawyers of Northern California, Equal Rights Advocates, the Coalition for Civil Rights, Black Fire Fights Association, Charles Huston Bar Association, LaRaza Lawyers Association of San Francisco, Bay Area Lawyers for Individual Freedom, Chinese-American Democratic Club, Legal Advocates for Women, National Women's Political Caucus-San Francisco, Los Angeles, National Gay and Lesbian Task Force, Bay Area Chapter/National Lawyers Guild, National Organization for Women, Latino Democratic Club, and San Francisco Women Lawyers Association.

This Committee has received substantial testimony from highly respected members of the San Francisco community, including the City attorney, the Board of Supervisors of the City and County of San Francisco, and numerous members of the San Francisco Bar, regarding Mr. Walker's fitness to sit on the federal bench. I am an economist by training, not an attorney; however, I have made the personal commitment to testify today on behalf of our community because I believe strongly that Mr. Walker's confirmation would constitute a grave step backwards in the provision of justice for the citizens of San Francisco in a fair and impartial manner.

The following are my reasons for this belief:

Olympic Club Membership

First, Mr. walker's membership for fifteen years in the Olympic Club, an organization well known in San Francisco for its open and systematic exclusion of minorities and women, indicates a lack of sensitivity to the constitutional liberties of the majority of the population he now wants to oversee as a member of the federal judiciary. Mr. Walker only recently resigned as a member of the Olympic Club in February, 1989 -- one week before his second nomination by President Bush -- in a patent attempt to remove long-standing association with the Olympic Club as an issue before this Committee. Other testimony before this Committee has addressed the issue of the veracity of Mr. Walker's testimony concerning (1) the current status of his Olympic Club association and (2) steps taken by the Olympic Club to comply with a San Francisco City ordinance specifically outlawing club discrimination against women and minorities. I will not repeat these arguments at this time. I will simply state that Mr. Walker's decision to join and continue to remain a member of a white male only club for over a decade casts an ominous and disturbing shadow over his judgment with regard to the basic issues of fairness which confront members of the federal judiciary on a daily basis.

LACK OF COMPASSION

Second, as citizens of the area for which Mr. Walker has been nominated to the federal bench, we are appalled by his obvious lack of compassion and broad-based professional standards, as evoidenced by his negible commitment to pro bono endeavors in sisteen years of practice as one of the most prestigious law firms in our city. It is my understanding that the San Francisco legal community has developed a national reputation for the outstanding commitment of its members to pro bono representation of the disadvantaged. However, as a well-paid member of the San Francisco legal community, mr. Walker has been able to identify only one family for whom he has provided pro bono services -- in over sixteen years of legal practice. Clearly, Mr. Walker's pro bono commitment falls short of the minimal levels of involvement recommended by both the American Bar Association and is incomprehensible when considered in the context of the considerable pro bono involvements of his peers. As in the case of his Olympic Club membership, Mr. Walker's almost non-existent commitment to the provision of legal services for the disadvantaged marks him as an attorney whose basic ethical disposition is illsuited for service on the federal bench.

PROFESSIONAL JUDGMENT

Third, Mr. Walker's professional past is filled with complaints from both fellow attorneys and the general public which indicate that his professional judgement and temperment is questionable. Mr. Walker's overly-zealous handling of litigation surrounding an attorney fee award in the case of I.O.C. v. San Francisco Arts and Athletics has already been well documented before this Committee. His refusal in that case to remove an attorney fee judgement lien from the property of Dr. Thomas Waddell, despite Ninth Circuit Court of Appeals action removing the original judgement awarding attorney's fees, and repeated requests from Dr. Waddell's attorney, constituted undue harassment of a private citizen, wholly-inconsistant with an even-tempered demeanor we expect from our federal judiciary.

WOMEN & MINORITIES ON THE BENCH

Finally, of crucial importance is the fact that Mr. Walker's confirmation to the federal bench in the Northern District of California is representative of a continuing reluctance on the part of the Reagan-Bush Administrations to identify and place qualified women and minorities on the bench. There are currently eleven judges on the Northern District Court. Of these, there are just one Black, one Hispanic, and two women. There is no Asian presence on the district bench. However, minorities compromise forty percent of our general population, but hold just eleven percent of the court seats. The confirmation of Mr. Walker to the bench, in an area which contains thousands of highly qualified attorneys, is a step backwards in the effort to place qualified women and minorities on the bench.

CONCLUSION

Mr. Walker lacks personal standards of ethics, he has limited legal and life experiences, and his appointment will further exacerbate the imbalance which exists on the Northern California District Court. These shortcomings warrant Judiciary Committee rejection of this nomination.

More importantly, all judges carry the responsibility of safeguarding the public trust -- of maintaining the public's confidence that all citizens who come before the court can recieve the fair hearing to which they are entitled under our Constitution. The people comprising the groups I speak for ask that this public trust not be eroded by confirmation of any person to the federal bench whose prior professional conduct has demonstrated a pronounced lack of concern for the needs of the average citizens of our community. We strongly urge that Committee members to reject Vaughn Walker as a judge on the federal bench for the Northern District of California.

Thank you, Mr. Chairman and Senators. You have been generous with your time and most kind to patiently listen to the concerns of citizens who live so far from your own states. I would be happy to answer your questions.

Senator Metzenbaum. Stephen Gillers, you have 3 minutes to answer all the previous questions plus your own statement.

STATEMENT OF DR. GILLERS

Dr. Gillers. I will do that, and I will talk slowly because Dr. Malveaux has said much of what I want to say, and I appreciate following her. I think your committee has three questions to answer, Senator. The first one is this: Do organizations like the Olympic Club hurt people, and the answer it seems to me is absolutely that they do. The nominee was a member of that organization for 15 years when effectively it excluded women and blacks. He supported it with his presence and his dues. It hurt the excluded population of the city in which he lived.

It is not like the Elks or the Masons, which are fraternal organizations. It is more like a place of public accommodation like a restaurant or a convention center or a hotel. You would not tolerate for a second a nominee who had supported a hotel or a restaurant that excluded blacks or women.

The second question is what does it do to the appearance of justice if a black person or a woman has to stand before a judge who for 15 years supported an organization that would not allow him or her to be a member? In a case in which race or gender is important, will that litigant, will that litigant's attorney believe that he or she is getting justice? The appearance of justice is critical here, and it seems to me that the answer is no.

Now the final question you have to ask is should the nominee be able to escape from the presumption of disqualification, by virtue of membership for most of his professional life? In my view, the answer is also no and that that rule ought to be applied prospectively. It would be unfair to apply that rule to Mr. Walker retrospectively. Rather as you said, Senator Metzenbaum, there is a presumption against confirmation and it seems to me that that presumption can be overcome only if the nominee demonstrates by clear and convincing evidence, his own active and visible and continuous opposition to the hateful policies of the organization he has gone to every day and supported.

Senator, I read the record, and I have listened to Mr. Walker here today. If that can overcome the presumption of disqualification, then virtually anything can. This is pitiful. This is anemic. This is not a record. This is a sad effort to persuade this committee that Mr. Walker is other than who he is. Nothing could be more transparent than the resignation in February. In June of 1988—I will just wind up—in June of 1988 Mr. Walker told you, told this committee, he was hopeful for change. Within weeks, the Olympic Club dug in its heels and resisted change by press release and litigation.

He remained a member until a week before his imminent knowing renomination. That is expedience. That is not commitment. In answer to the Senator's question, I believe I knew everything he mentioned except the Dawson letter.

[The statement of Dr. Gillers follows:]

TESTIMONY OF
STEPHEN GILLERS
PROFESSOR OF LAW
NEW YORK UNIVERSITY SCHOOL OF LAW

BEFORE THE
COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

ON

THE NOMINATION OF VAUGHN WALKER
TO BE A JUDGE OF THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

November 9, 1989

My name is Stephen Gillers. I am a professor of law at New York University Law School, where I have been on the faculty since 1978. I teach courses in legal and judicial ethics, evidence, and federal courts. I have written and lectured widely on legal and judicial ethics and the law governing the conduct of lawyers and judges.* Thank you for the opportunity to testify here today.

SUMMARY OF TESTIMONY

My testimony will urge the following:

First, the Committee should refuse to confirm any nominee for a federal judicial post who hereafter joins or remains a member of a *predominantly commercial* organization of any kind, including one that calls itself a club, if the organization excludes persons based on reasons such as race, religion, gender, or national origin. I italicize *predominantly commercial* for a reason. I believe it is feasible for this Committee, as it has been for courts and legislatures, to distinguish between organizations that are distinctly private and those that are predominantly commercial so that membership in the latter, but not the former, will disqualify a nominee if the organization discriminates. I shall show below that this is a tenable distinction.

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* One article addressed the issue that is the subject of this testimony. "We've Winked For Too Long," National Law Journal, Dec. 21, 1987, at 13. A copy is annexed.

Second, the Committee must be prepared, when appropriate, to make exceptions to the policy I propose to avoid unfairness to persons whose memberships in discriminatory, predominantly commercial organizations occurred before they could have been aware of the consequences of such membership to a judicial nomination.

Third, the Committee should reject the nomination of Vaughn Walker to be a United States District Judge for the Northern District of California because of the circumstances surrounding his membership in the Olympic Club. The Olympic Club excluded women from membership for the nearly fifteen years that Mr. Walker was a member. It effectively excluded black men from membership until 1988. As of September 1988, only five black men were among the club's 4700 male members. Mr. Walker resigned from the club in February 1989, one week before his renomination. The history of Mr. Walker's membership in the club, and his lack of serious effort to change its policies, should lead the Committee to reject his nomination quite apart from the categorical rule I urge the Committee to adopt for future nominees.

PERSONS WHO BELONG TO EXCLUSIONARY, PREDOMINANTLY COMMERCIAL ORGANIZATIONS SHOULD NOT BE CONFIRMED FOR FEDERAL JUDICIAL POSTS

Significant commercial advantages flow from membership in many athletic and social clubs. I am speaking about large organizations. The Olympic Club has 4700 members. I am not speaking about intimate, essentially private groups. I am not speaking about organizations formed as religious corporations or as benevolent orders.

A nominee who joins a predominantly commercial organization of any kind that excludes people based on race, religion, national origin or gender reaps the financial and career benefits such an organization affords while helping to maintain it with his dues, name, energies, and presence. Individuals with like aspirations for success in the professions or business, but who are black or brown or Catholic or Jewish or women, are denied these advantages if the organization excludes them. For these people, their good character doesn't matter. Their academic achievement doesn't matter. Their willingness to work hard doesn't matter. Skin color matters. Religion matters. Gender matters.

The fact that a discriminatory, predominantly commercial organization chooses to call itself a "club" is irrelevant. A different label does not change the reality that such an organization denies excluded groups significant professional and business advantages.

Members who support and enjoy the business advantages of discriminatory, predominantly commercial organizations must know -- should be presumed to know -- what the New York City Council found as a fact when it banned discrimination by organizations like the Olympic Club in 1984. The Council found:

> One barrier to the advancement of women and minorities in the business and professional life of the city is the discriminatory practices of certain membership organizations where business deals are often made and personal contacts valuable for business purposes, employment and professional advancement are formed. While such organizations may validly be organized for social, cultural, civic or educational purposes, and while many perform valuable services to the community, the commercial nature of some of the activities occurring therein and the prejudicial impact of these activities on business, professional and employment opportunities of minorities and women cannot be ignored.

Stated most directly: By their discriminatory policies, large, predominantly commercial clubs and organizations, including the Olympic Club, no less than a discriminatory trade association, trade union, or convention hall, predictably and inevitably impede the ability of all persons, regardless of race or gender, to participate fairly and equally in the business and professional life of the nation and their local communities. That is a fact. I ask the Committee to recognize it as a fact. And I suggest that every member who supports such a club should be held to be aware of that fact.

Now let me say a word about the job of federal judge. American life offers no more honorable position than to sit on the federal bench at any level. The courts of the United States constitute one of the most impressive political achievements of any nation anywhere. United States judges have been at the vanguard of the protection of the political and civil rights of Americans. They respond to the most sensitive issues of alleged bias based on race, sex, and religion. They are guardians of the constitutional and statutory guarantees of equal treatment. Is affirmative action an acceptable remedy to redress past discrimination? Does sexual harassment amount to gender bias in violation of equal employment laws? Are tuition tax credits to schools that exclude blacks constitutional? When deciding claims like these, it is essential that judges be, and appear to be, unencumbered by stereotypical or hostile views about the groups whose rights they adjudicate. Litigants must have that confidence. So must the public.

An unbiased, and an apparently unbiased, judiciary is also important in trials that affect only a few. We could not have asked the minority community to accept the fairness of the trial of subway gunman Bernhard Goetz if the trial judge was a member of and supported a commercial organization that rejected blacks. Nor can a judge who supports a commercial organization that excludes women bring the appearance of fairness to a case alleging the improper exclusion of women from high-paying jobs traditionally held by men.

Issues like these, at the appellate and trial level, routinely confront United States judges. All Americans, but especially Americans who have suffered discrimination, have reason to be suspicious of the impartiality of a judge who has lent his name, money, energy and person to a discriminatory organization that has, by its very existence, thwarted fair and equal participation in the business and professional life of a community or the nation. Membership in a discriminatory, predominantly commercial organization should be a disqualification for the federal bench whatever name the organization goes by. What matters is the organization's predominantly commercial status.

If you agree with me on the principle that knowing membership in a discriminatory, predominantly commercial organization should disqualify a person for the federal bench, the remaining question is one of application. How do we identify the kinds of organizations in which membership should be disqualifying?

New York City has attempted to distinguish clubs that are essentially private from those that are predominantly commercial. In 1984, the City amended its Human Rights Law to list three criteria that will tend to establish a club as predominantly commercial and, therefore, a place of public accommodation that cannot discriminate based on race, creed, color, national origin or sex. The three criteria are: that the club "has more than 400 members"; that it "provides regular meal service"; and that it "regularly receives payment for dues, fees, use of space, facilities, services, meals or beverages, directly or indirectly from or on behalf of non-members for the furtherance of trade or business." Religious corporations and benevolent orders are exempt.

The New York State Club Association alleged that this law violated the First Amendment right of club members to enjoy freedom of association. A unanimous Supreme Court rejected this challenge. New York State Club Ass'n. v. City of New York, 108 S.Ct. 2225 (1988).

Let me quote the concurring opinion of Justice O'Connor in which Justice Kennedy joined. Justice O'Connor explained that the three factors in the City law were not exclusive but were to be considered along with other factors, such as a club's size, purpose, policies, selectivity, and congeniality. She then anticipated that some organizations falling within the local law's definition would nevertheless receive protection because "their expressive purposes would be substantially undermined if they were unable to confine their membership to those of the same sex, race, religion or ethnic background, or who share some other such common bond." Justice O'Connor then concluded:

> But as the court points out . . . the existence of such protected clubs does not mean that [the City law] cannot be applied to other clubs. Predominantly commercial organizations are not entitled to claim a First Amendment associational or expressive right to be free from anti-discrimination provisions triggered by the law. Id. at 2237.

The majority opinion drew the same distinction:

> It is conceivable, of course, that an association might be able to show that it is organized for specific expressive purposes and that it will not be able to advocate its desired viewpoints nearly as effectively if it cannot confine its membership to those who share the same sex, for example, or the same religion. In the case before us, however, it seems sensible enough to believe that many of the large clubs covered by the Law are not of this kind. Id. at 2234.

The Supreme Court's unanimous decision in New York State Club Ass'n should instruct this Committee. The Court recognized that it is constitutionally appropriate to distinguish between organizations that are "predominantly commercial" and those that are "distinctly private." There will undoubtedly be close cases. There is no bright line test. But the absence of a bright line test should not prevent this Committee from making distinctions, any more than it has prevented the Supreme Court or legislative bodies.

The American Bar Association also recognizes that it is possible to distinguish among various kinds of organizations for purposes similar to those before you. The current Code of Judicial Conduct makes it "inappropriate for a judge to hold membership in any organization that practices invidious discrimination on the basis of race, sex, religion, or national origin." Commentary, Canon 2, ABA Code of Judicial Conduct. A proposed revision of the Code would make that principle mandatory. Draft Revisions to ABA Code of Judicial Conduct, Discussion Draft (May 1, 1989). Commentary in the proposed draft states that whether an organization practices invidious discrimination depends on various factors,

> such as whether the organization is dedicated to the preservation of religious, ethnic or cultural values of legitimate common interest to its members, and whether it is in fact and effect an intimate, purely private organization whose membership limitations could not be constitutionally prohibited.

Notably, the commentary cites the Supreme Court's opinion in New York State Club Ass'n.

The Olympic Club is clearly a predominantly commercial organization. The following information is drawn from a Memorandum submitted by the San Francisco City Attorney in City and County of San Francisco v. The Olympic Club. The Memorandum was filed June 1, 1988 in the California Superior Court in San Francisco.

1. The Olympic Club's structure reveals a corporate organization and management. The club has authority to borrow money and issue bonds. Its directors and officers are indemnified against any legal action arising out of official conduct.

2. The club operates two social and athletic facilities. One, at 524 Post Street in San Francisco, has seven floors with various athletic facilities, meeting rooms, banquet rooms, snack bars, a restaurant and an indoor swimming pool. This facility also has a barber shop and a laundry, holds a hotel license for 28 rooms, and includes a store that sells athletic goods, apparel and other items to members and guests.

A second facility, at Lakeside in San Francisco, has two 18-hole golf courses, tennis courts, driving ranges, putting greens and a multistory clubhouse containing banquet halls, restaurants, indoor athletic facilities, an indoor swimming pool, a bar and grill, personal residences and offices. The club operates a gas station and car washing facility at this location as well as two retail shops offering sporting clothes and equipment.

3. The Olympic Club employs a staff of approximately 230 employees, whose jobs include housekeeping, food service, bartending, maintenance, accounting, data processing, secretarial work, and other service-related tasks. The club is a party to several collective bargaining agreements and contributes to a multi-employer pension fund.

4. The club publishes a monthly magazine, Olympian, to which members are required to subscribe. The magazine is supported by commercial advertising.

5. The club has a club insignia and has contracted with companies to produce items bearing its insignia.

6. In fiscal year ending September 1986, the club's revenues were approximately $12 million, of which only about 40% was from dues. The remainder came from commercial sources. The club has issued bonds to finance its operations.

7. The club earns substantial revenue from the sale of food and liquor to members and guests. The Post Street facility has a dining room that seats 225 people, another dining room that seats 65 people, and three banquet rooms. The Lakeside facility has six separate eating areas seating from 50 to 180 people each. The club holds seven restaurant licenses among its two facilities. It holds two liquor licenses.

8. The club owns real estate from which it earns income. The club has leased one parcel of real estate, adjoining its downtown facility, to a partnership that has built a hotel on the property. The lease provides the club with more than a half million dollars a year in minimum rent and a potential for more depending upon the income of the hotel.

9. In June 1987, the U.S. Open was held at the Olympic Club and generated about $11 million in gross revenues.

10. The club offers its facilities for business meetings, banquets and parties. Club members are encouraged to advertise their affiliation with the club and the Olympian contains advertisements by persons identified as Olympians who are seeking business from other Olympians. Club members advertise not only their membership in the club but the number of years they have been affiliated with it.

In addition to these attributes of commercial status, I am informed that many employers of club members have customarily paid or reimbursed the dues of their employees and that the club had, and may still have, a policy of billing guests of members directly for their purchases.

When a man who belongs or has belonged to a predominantly commercial organization, like the Olympic Club, comes before you for confirmation as a federal judge, the Committee, like the Court, like the New York City Council, should have no difficulty in rejecting that nominee on the ground that his membership is incompatible with the appearance of impartiality so important to our federal tribunals. I want to stress that the Olympic Club's commercial attributes should not establish the minimum prerequisites for predominantly commercial status. The Olympic Club is probably an extreme example of a predominantly commercial organization trying to invoke the "club" label to present itself as predominantly social. An organization may be predominantly commercial in its purposes -- and in reason for membership -- without being as large or diverse an enterprise as the Olympic Club is.

THE ISSUE OF PROSPECTIVE APPLICATION

What are we to do about the fact that the categorical policy I have proposed would, if adopted, be a change in the Committee's position? Sudden changes are unfair. Notice is appropriate. And so I would not advocate a categorical rule that flatly excluded nominees who have, before today, belonged to discriminatory, predominantly commercial clubs. Nominations of these individuals must be evaluated on a case-by-case basis.

But that is not true with regard to nominees who come hereafter. If members of this Committee make it known that after today membership in predominantly commercial, discriminatory organizations of any kind will cause them to vote against confirmation, then future nominees will have been put on notice. The word will go out.

That brings us to the nomination of Mr. Walker. Since the word has not yet gone out, his 15-year membership in the Olympic Club cannot categorically exclude him. His case must be examined.

VAUGHN WALKER'S NOMINATION SHOULD BE REJECTED BECAUSE OF THE NATURE OF HIS 15-YEAR MEMBERSHIP IN THE OLYMPIC CLUB

The Olympic Club is a predominantly commercial organization. It is the very kind of organization whose discriminatory policies foster inequality of minorities and women by denying them the professional and business advantages of membership. Mr. Walker supported this organization with his dues, his name and his person for nearly fifteen years of his professional life.

When Mr. Walker joined the Olympic Club in 1974 or 1975, it excluded women from full membership and, while black males were eligible for membership, it had none and would not until 1988. When it did admit a few black men, it was after negative publicity and a threatened lawsuit.

In October 1987, after being warned by the San Francisco City Attorney, the club's board proposed extension of voting rights to women but that proposal was rejected. Mr. Walker nevertheless remained a member of the club. At the same time, Judge Anthony Kennedy -- then on the Ninth Circuit Court of Appeals and now a Supreme Court Justice -- resigned, because membership had become "quite untenable."

The City of San Francisco filed an action against the club in November 1987, charging unlawful discrimination against blacks and women. The club contested the action. In June 1988, after the Supreme Court's decision in New York State Club Ass'n, the club began to implement a series of moves toward "privatization," with the ostensible purpose of insulating itself from anti-discrimination laws. It issued a press release proclaiming "itself forced to defend the fundamental rights of its members against the forced arm of political oppression." Two weeks earlier, Mr. Walker had expressed his hope to this Committee that the Olympic Club would change its policies. Apparently, his hopes were not dashed by the ensuing events because he remained a member of the club for eight more months.

Not until February 1989 did Mr. Walker resign, on the eve of his renomination. Having previously been nominated to the federal bench in 1987, having had the issue of his club membership extensively examined at his confirmation hearings, Mr. Walker remained a club member even as the club challenged the City's lawsuit and the anti-discrimination laws through cross-claims, privatization, and press release.

Resignation then was no awakening of conscience. I suggest that it was calculated to reposition the expectant nominee for the next round -- this round -- of confirmation hearings. Mr. Walker's letter resigning from the Olympic Club says as much. He wrote:

> As you know, I was nominated to the United States District Court by President Reagan in December 1987, and have been told that I may again be nominated to that position by President Bush.

The letter then goes on to offer Mr. Walker's resignation. What happened in February 1989 to prompt this letter if not the writer's imminent renomination, which came a week later?

What did this nominee do between 1974 and his appearance here in June 1988 to encourage the Olympic Club to accept minority members and to change its rule with regard to women? I have read Mr. Walker's testimony before this Committee. He claims there to have expressed his "distaste for the club's slowness in accepting minority members." But these sentiments were expressed in private conversations with others. He claims to have "discussed" the possibility of sponsoring an unidentified "black acquaintance," but this effort failed when the candidate moved away. Mr. Walker mentioned no further recruitment efforts. Whatever record Mr. Walker may have attempted to compile since his testimony should, like his resignation, be viewed with great skepticism.

The truth about Mr. Walker's membership appears to be this. He was a complacent and silent member of the Olympic Club for 15 years, during which time he enjoyed the benefits it afforded his career. He lent it his name and person. He gave it his dues. He did nothing or virtually nothing likely to change its discriminatory policies. He became sensitive to the issue of discrimination when doing so would benefit him. Even then, he remained a member of the club, optimistically predicting change and insisting, in testimony before you, on the individual's right to decide whether resignation is appropriate. Two weeks after Mr. Walker testified here, the club announced its privatization efforts and dug in its heels, yet Mr. Walker remained a member. He resigned in 1989, not because it dawned on him that the club was not going to change its policies, but because he learned of his imminent renomination. Would we be surprised if Mr. Walker were to reestablish himself as a member of the Olympic Club should his nomination fail?

Contrast Mr. Walker's conduct with that of Justice Kennedy. Before his nomination to the Supreme Court, Justice Kennedy wrote to the club's legal committee urging removal of the bylaw restricting membership by women. Justice Kennedy wrote: "The fact is that constitutional and public morality make race or sex distinctions unacceptable for membership in a club that occupies the position that the Olympic Club does."

Justice Kennedy's conduct helped inspire the proposed bylaw recognizing membership for women. When that bylaw was rejected, Justice Kennedy resigned from the club.

CONCLUSION

Hereafter, any nominee who remains a member of a predominantly commercial organization that discriminates against minorities or women should be denied confirmation. Nominees who have heretofore been a member of such clubs should be evaluated on a case-by-case basis. On that basis, Mr. Walker's nomination should be rejected.

Thank you.

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PODIUM

We've Winked For Too Long

The Kennedy hearings provide the Senate with an opportunity to make it clear that a judge's membership in an exclusionary club no longer is acceptable.

FOR HIS ENTIRE professional life, U.S. Circuit Judge Anthony M. Kennedy was a member of clubs that excluded women and admitted no blacks. Now the Senate must decide whether to confirm him for the Supreme Court.

In doing so, the Senate must ask whether Judge Kennedy's club memberships signify deeper insensitivity to the rights of minorities and women. But it should do more. The Kennedy hearings provide the Senate with an opportunity to announce that hereafter no one will be confirmed as a federal judge who becomes or remains a member of a club that excludes people based on race, religion or gender. Membership in a club without an exclusionary policy, but which in fact has few or no minority or female members, also must preclude confirmation.

Judge Kennedy, a member of the 9th U.S. Circuit Court of Appeals, joined San Francisco's Olympic Club in 1962, when club policy excluded both women and minorities. He remained a member until October of this year, when he came under consideration for the Supreme Court. The Olympic Club continues to exclude women. And, although its racial policy ended 19 years ago, it still has no black members and only a few Asians and Hispanics. This fall Judge Kennedy also resigned his 28-year membership in Sacramento's all-white Del Paso Club.

A candidate's membership in an exclusive club has not traditionally disqualified him for a judgeship. The reaction usually is far more tolerant. First come the expressions of concern. Then the candidate is asked to explain. He announces that he opposed his club's policies. He may claim to have worked against them from within. He may even offer to resign. If the candidate thus redeems himself, we allow him to take his seat.

BY STEPHEN GILLERS

WE SHOULDN'T. From the Supreme Court down, our judiciary responds to the most sensitive issues of alleged bias based on race, sex and religion. These issues arise most dramatically when appellate courts address broad legal questions of importance to women or minorities. Is affirmative action an acceptable remedy to redress past discrimination? Does sexual harassment amount to gender bias in violation of equal employment laws? Are tuition tax credits to schools that exclude blacks constitutional? When deciding claims like these, it is essential that judges be, and appear to be, unencumbered by stereotypical or hostile views about the groups whose rights they adjudicate.

An unbiased judiciary is also important in trials that affect only a few. We could not have asked the minority community to accept the fairness of the trial of subway gunman Bernhard Goetz if the judge had been a member of a club that rejected blacks. Nor can a judge who belongs to a club that excludes women bring the appearance of fairness to a case alleging the exclusion of women from high-paying jobs.

We've winked at this problem too long. Now we have a chance to stare it down.

Impetus for change might have come from the American Bar Association, but that group's response has been closer to a peep than a roar. In 1984, the ABA amended its Code of Judicial Conduct to call it "inappropriate for a judge to hold membership in any organization that practices invidious discrimination on the basis of race, sex, religion or national origin."

This statement sounds good, but it has four fatal problems. First, it is part of the code's commentary, not its mandatory rules. Second, the code does not bind federal judges. Third, the new language excludes outside review, opting instead to have "each judge . . . determine in the judge's own conscience whether an organization of which the judge is a member practices invidious discrimination." Fourth,

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Mr. Gillers is a professor at New York University School of Law, where he teaches legal and judicial ethics.

Senate Should Take a Stand on Exclusionary Clubs

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the word "invidious" is too vague. Judge Kennedy has told the Senate Judiciary Committee that, in his view, the rule's use of the word "invidious" made it inapplicable unless a club's policy of exclusion is intended to impose a "stigma" on the excluded groups. That construction effectively reads the rule out of the code.

SO THE SENATE must take the lead. But how? It would be unfair to make membership in an exclusive club a retroactive bar to appointment. Many lawyers and judges have relied on signals that these memberships don't count as long as the nominee did not actively support the exclusionary policy. To change that, we need a warning that they do count, no matter what.

That's where the Kennedy confirmation hearings offer an opportunity. If enough senators to cause confirmation uncertainty were to say that membership in an exclusive club will cause them to vote against a nominee, imagine what could happen. Many lawyers would try to get their clubs to change their policies and practices or, failing that, resign. Younger lawyers would hesitate to join exclusionary clubs. State officials responsible for nominating or confirming judges might pick up the Senate's cue. The ABA might even adopt a stronger, mandatory prohibition.

The new policy will not end exclusionary clubs, many of whose members are not lawyers or are lawyers with no interest in the bench. But it will send a moral message that will be heard in the world of judicial selection and beyond. On the other hand, if the Senate merely clucks, shakes its head and continues to confirm nominees with exclusive memberships, it will send a sadder message, one that ignores the fact that women and minorities are denied the appearance of justice if the person chosen to dispense it supports an organization that excludes them.

> The new policy will not end exclusionary clubs. But it will send a moral message to be heard in the world of judicial selection.

WHERE DOES that leave Judge Kennedy? Although the new rule will not apply to him, his memberships in exclusionary clubs for more than a quarter century are relevant to his qualifications. In light of them, the Senate must probe his views on women and minorities, both off and on the bench.

Off the bench, we need to know what role, if any, Judge Kennedy had in maintaining the gender and racial exclusions in the clubs he joined. What affirmative steps did he take to reverse them? Why did he wait until he was under active consideration for the Supreme Court before resigning? Has Judge Kennedy acquiesced in racial or gender discrimination elsewhere?

On the bench, we must closely analyze Judge Kennedy's opinions in cases dealing with the rights of women and minorities. Do these reveal a serious effort to understand and address their claims, or are they dismissive and peremptory?

We must make this extra effort in Judge Kennedy's case because he was not forewarned. But let us now alert all who follow him that this bicentennial year will be the last in which we confirm a judicial nominee whose money and person have supported a discriminatory organization.

Senator METZENBAUM. I think, Dr. Gillers, that you have well summarized the nub of this case. And I think the nub of the case is if a man or a woman is a member of a discriminatory club for a considerable period of time and does nothing, but then when the issue becomes a more active one, does some things, writes a letter to the magazine, although I have never seen the letter, I might say, and there seems to be some question as to the date according to Louise Renne, and he contributes $100 in December of 1988 to a committee which is trying to change the bylaws, and if he did, indeed, say to Mr. Dawson, the president of the club. we should be changing the bylaws, the question is has he done enough or should he have gone the whole way and resigned? And I must say to you as a human being who has spent a lifetime fighting discriminatory clubs, in fact, taking them to court and winning, I am having some difficulty in assessing the evidence in this case in trying to be fair to the man and trying to be fair to what I consider to be right and proper as far as a judicial nominee is concerned. So I tell you that it is not a simple question.

Mr. Bourke.

STATEMENT OF THOMAS BOURKE

Mr. BOURKE. Thank you. I am a lawyer representing only myself. I went to Notre Dame, and I graduated from NYU law school. I came to know Mr. Walker through opposing him in the Spendthrift farm litigation. I spent 2½ years doing so. Basically I was approached by the Judiciary Committee and asked to give my views which I did so under an agreement of confidentiality. And I began to think about, and I began to think that as a Republican, I owed it to Pete Wilson and Senator Thurmond and to Vaughn Walker to let myself stand up and be counted for what I had said in a confidential basis.

My concern with Vaughn Walker has to do with what he did already with the power that he does have. In the case I was with him, it seemed to me that he used his power, which was considerable, to needlessly hurt people. I know that there is a canon of ethics which says that a lawyer must zealously represent his client within the bounds of the law, but there are at least two limitations which I think he has violated.

One is that a lawyer is never justified in asserting a position in litigation which is frivolous. And a second is that the duty of a lawyer to represent his client with zeal does not militate against his concomitant duty to treat with consideration all persons involved in the legal process and to avoid the infliction of needless harm.

And it is in this area where I think he manifests a lack of judgment which not only needlessly antagonizes his opponents but also shows a lack of judgment in terms of serving his own clients. And that is the inability to let go of any claim, the inability to let go of any defendant in a way that needlessly increases the expense and the inefficiencies of our litigation process. I heard Mr. Walker testify earlier about his commitment to the economical and efficient delivery of legal services, but our system is one where it is a do-it-yourself system mainly left up to the lawyers to police themselves.

In our case there are many things he did to make it very uneconomical and very inefficient and very burdensome on the people that he had sued, and who, I might add, I believe he had sued without a factual basis, and in this regard, as I recall, every defendant left in the case filed rule 11 sanction motions against Mr. Walker. One example which I set forth in my letter to the committee had to do with a claim under New York Blue Sky Law where the New York highest court had ruled that there was no such claim, and I wrote two letters to Mr. Walker. Another lawyer wrote one. But he did nothing to dismiss these claims for over a year, and we had to make a final motion to get it dismissed.

I referred to, and I know that there is a letter from Jack Jones about the settlement of Mr. Brodmann which Mr. Walker initially entered into and then seemed to back off for what I regarded as vindictive reasons. He made discovery tougher than it should have been and very expensive. The lawsuit was one which the judge described as this case probably stands as, as bad an example as any, of where the present system we have has resulted in tremendous expense and great hardship, and I am sure for a lot of people.

Mr. Walker brought motions against my client, which I felt were unjustified and which were denied by the judge, and which I felt were only for the purpose of running up expenses. He promised to dismiss another defendant, a Mr. McGinnis, and did not do so, resulting in a need for a summary judgment motion. And one instance when I felt that Mr. Walker had been maybe through inadvertence caught in a mistake that might prejudice his clients, I thought he was less than candid with the court in talking about an oral agreement which I thought I had never made with him. He said maybe there is a disagreement. I did not think there was such an agreement. Thank you.

Senator **METZENBAUM**. Thank you very much. Senator Thurmond has questions, and I will be right back.

Senator **THURMOND**. We are very glad to have the panel here. I am just going to ask one or two questions of each one of you. I will ask them briefly and you can answer them briefly. No use to take a lot of time to elaborate. First, I want to ask Ms.—do you pronounce it Renne or Renne?

Ms. **RENNE**. Renne, like Jack Benney, Senator.

Senator **THURMOND**. Do you believe Mr. Walker is a skilled, capable attorney, and do you know that he has been rated well qualified by the Bar Association of San Francisco?

Ms. **RENNE**. I have done no independent analysis, Senator. I do not even know how he was rated to tell you the truth of the matter.

Senator **THURMOND**. Is it true that your husband was also a member of the Olympic Club for over 10 years, and resigned the day before you filed a lawsuit against the club in November of 1987?

Ms. **RENNE**. He resigned the day after the vote was taken by the Olympic Club rejecting the compromise that had initially been worked out with the board of directors.

Senator **THURMOND**. I believe during this time as a member of the club you had been a guest of the club on occasions?

Ms. **RENNE**. I have been to the club, yes, indeed.

Senator **Thurmond**. Mr. Hallinan.

Mr. **Hallinan**. Yes, Senator?

Senator **Thurmond**. In 1980 you ran for the San Francisco Board of Supervisors, I believe.

Mr. **Hallinan**. That is correct.

Senator **Thurmond**. You filed a lawsuit after the election in an effort to throw out the absentee ballots which counted for 4600 votes.

Mr. **Hallinan**. That is correct.

Senator **Thurmond**. You subsequently lost the election after Mr. Walker successfully represented a candidate for municipal judge who filed to have the absentee ballots counted and won.

Mr. **Hallinan**. I heard that said earlier. I do not—he certainly never appeared in court. His name was not on any of the documents filed in the case, and I am up until this point that it was mentioned by, I guess, Senator Wilson, I was totally unaware that he had anything to do with that case whatsoever, and it was one of those cases where the paper in the morning said I won and the paper in the afternoon said I lost.

Senator **Thurmond**. As you have been on the losing side of a lawsuit in which Mr. Walker represented the prevailing party, is it not difficult for you to remain objective about his nomination?

Mr. **Hallinan**. As I said, Senator Thurmond, I do not think that it is true that he represented the prevailing party. I know that he did not appear in court on behalf of Supervisor Nelder on that matter, and it was heard in the Superior Court, not the Municipal Court.

Senator **Thurmond**. Dr. Malveaux, do you personally know Mr. Walker, and are you aware that the Bar Association of San Francisco found him to be well qualified for his appointment?

Dr. **Malveaux**. Senator, I do not know Mr. Walker, and I do have doubt about the bar association's finding given their white male bias.

Mr. **Hallinan**. And they did split on that recommendation, Senator.

Senator **Thurmond**. Dr. Gillers, do you know that Mr. Walker has stated that he tried to work within the Olympic Club to effect change for membership for women? In fact, that Mr. Walker made serious efforts to change the membership policies of the Olympic Club?

Dr. **Gillers**. I knew that he stated that. I am not sure that I accept your characterization in the second part of your question.

Senator **Thurmond**. And Mr. Bourke, in your letter you stated Mr. Walker does have virtues. He works hard, is smart, well read, and does not lose his temper. Do you still agree with your assessment of him in your letter dated October 19, 1989?

Mr. **Bourke**. Yes, I do.

Senator **Thurmond**. Is it true that you filed Rule 11 sanctions against Mr. Walker and lost?

Mr. **Bourke**. Yes, it is.

Senator **Thurmond**. I have no further questions, Mr. Chairman.

Senator **Metzenbaum**. I want to thank the witnesses. I think there may be some written questions that we will have for you although we are under the constraints of time because I think the last Judiciary Committee this year will be on Thursday, and so we have some problems on that. Thank you all. You have traveled a long distance. Your testimony is very helpful, and we are very grateful to you, and certainly we will take it into consideration. Thank you.

Mr. **Hallinan**. Thank you, Senators.

Senator **Metzenbaum**. Senator Thurmond makes the point, while the next witnesses are coming to the table, Senator Thurmond makes the point that Mr. Walker should be given an opportunity to respond to the alleged threat that Ms. Renne had spoken to. Mr. Walker, do you want to do that?

Mr. **Walker**. Yes, indeed, Senator Metzenbaum.

Senator **Metzenbaum**. Briefly.

Mr. **Walker**. I appreciate the opportunity to do that. I am afraid I cannot agree with Ms. Renne's recollection of that conversation. I do not recall it that way at all, and I categorically deny that I told her "you will be sorry for coming" or made any other statement which could reasonably have been construed as a threat or vindictive.

I may have said I am sorry to hear that you are coming. I may have said that you are mistaken about me or something of that kind, but I categorically deny saying "you will be sorry," which are the words which she stated.

Senator **Metzenbaum**. Thank you.

Mr. **Walker**. With reference to Mr. Bourke's testimony, I would like to respond to that in writing because I think the points he made with respect to the litigation should be made in writing. That case is still in the courts. In fact, we anticipate an appeal to go forward, and I would appreciate, Senator Metzenbaum, the opportunity to submit to the committee a written response to Mr. Bourke's——

Senator **Metzenbaum**. I think you should do that very promptly.

Mr. **Walker**. I shall so today, sir.

[Response to Mr. Bourke's comments follows:]

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November 9, 1989

Honorable Joseph R. Biden
Chairman
Senate Judiciary Committee
Washington, D. C. 20510

Dear Mr. Chairman:

Enclosed is a copy of my response to the testimony today and the October 19, 1989 letter of Mr. Thomas K. Bourke to you, which I promised to provide for the record of today's hearing on my nomination.

Sincerely

Vaughn R. Walker

Enclosures

cc: Honorable Howard M. Metzenbaum
Honorable Strom Thurmond

This memorandum addresses matters raised in a letter dated October 19, 1989 by Thomas K. Bourke to the chairman of the Senate Judiciary Committee.

1. I represented plaintiffs in four separate cases that arose out of sales of stock in Spendthrift Farm, Inc. during 1983. The first of the cases was filed in November 1984 (Crook v. Combs, et al., No. C-84-7292 EFL) and handled by The Honorable Eugene F. Lynch; later I represented other plaintiffs in three additional cases filed in 1986 (Layman, et al. v. Combs, et al., No. C-86-1692 CAL; Griggs v. Combs, et al., No. C-86-3474 CAL; Yoshida v. Combs, et al., No. C-86-3673 CAL) and are pending before The Honorable Charles A. Legge. Settlements totaling over $4.3 million were paid by some of the defendants in these and related cases. Mr. Bourke notes that the remaining defendants made settlement offers for additional millions which plaintiffs for the most part rejected preferring to go to trial. Parts of three of the cases I was involved in were tried from February to May 1989; other parts of these cases were disposed of on motions granted or denied by The Honorable Charles A. Legge.

2. Following the trial, Mr. Bourke brought motions for sanctions and attorney fees on the grounds that the actions against his client were frivolous, in bad faith

and brought for improper purposes. Mr. Bourke raised essentially the same matters mentioned in his letter to Senator Biden. All of Mr. Bourke's motions in this regard were denied.

Mr. Bourke's suggestion that he failed to get sanctions because of Townsend v. Holman Consulting Corp., 881 F.2d 788 (9 Cir. 1989), does not wash. That case was decided only 10 days before Judge Legge denied sanctions, was not argued or (as far as can be known) relied on by Judge Legge; further, the rule which Mr. Bourke claims that the case announced and precluded an award of sanctions was an entirely unsettled matter in the Ninth Circuit before Townsend, see 881 F.2d at 795, n. 8. Moreover, Judge Legge made lengthy remarks on the record that he had long favored awarding prevailing parties their attorney fees, but despite this belief still found that denial of Mr. Bourke's sanction request was appropriate.

3. Two of the clients I represented in this litigation are New York residents: Barry K. Schwartz and Calvin Klein. Accordingly, on behalf of these clients, I sought relief under New York law, as well as Federal law. At the time the complaint was filed, the New York courts recognized an implied private right of action for securities fraud under section 352-c of that state's Martin Act (see

Herzfeld v. Laventhol, Krekstein, Horwath & Horwath, 378 F.Supp. 112, 129-130 (S.D.N.Y. 1974), reversed in part on other grounds, 540 F.2d 27 (2 Cir. 1976)) and failure to register securities under section 359-e of the Martin Act. See Sajor v. Ampol, Inc., 9 N.E.2d 803 (N.Y. Ct. App. 1937). Then, in September 1987, the New York Court of Appeals ruled that no private right existed under section 359-c. CCP Intern. Inc. v. McKesson Corp., 514 N.E.2d 116, 119 (N.Y. Ct. App. 1987). Following that decision, my firm informed defense counsel that we would dismiss the New York state law claims if the CPC decision survived.

The gist of Mr. Bourke's complaint seems to be that I did not act soon enough in giving up the New York state law claims. But the substantive elements of that claim were identical to the Federal securities fraud claims which I continued to pursue on behalf of Messrs. Schwartz and Klein so, even if I was tardy (which is not true), Mr. Bourke's client suffered no prejudice. The court obviously so determined because Mr. Bourke asserted this same argument in his attempt to obtain the sanctions against me and my clients which the court denied.

4. The "significant sanctions" which Mr. Bourke claims the court awarded "for discovery abuse" were not sanctions (at least as that term is used in the Federal

Rules of Civil Procedure) and had nothing to do with Mr. Bourke or his client. Some defendants (other than the one represented by Mr. Bourke) brought motions to compel production of documents for which we had not timely filed correctly phrased privilege objections. A court magistrate granted some of these motions and awarded attorney fees and expenses under Rule 37(a)(4) of the Federal Rules of Civil Procedure. Such an award is simply not "sanctions," which are governed by subdivision (b) of Rule 37. See Advisory Committee Notes to the 1970 Amendment. Indeed, an award of fees and expenses must be made unless the court makes a finding that such an award would be unjust. Ibid. Moreover, the amounts awarded were only a portion of what the prevailing defendants requested. The Magistrate's orders described the motions as a "routine" discovery dispute.

As for the charge of "abuse of the discovery process," Mr. Bourke represented a defendant who he claims was "peripheral," yet Mr. Bourke served 12 sets of interrogatories and at least 4 sets of requests for admissions on behalf of this defendant. At one hearing, the judge in the case had this to say to Mr. Bourke:

> "I might say that I am having a hard time understanding your tactics in this case. You are rightfully contending that Mr. Bryant may have a

peripheral position with respect to these defendants; correct? He probably does.

* * * * *

"But you are the one who's burning up all the time and expense of the court. I find it very inconsistent with Mr. Bryant's position for you not to adopt the water cooler defense and go back and sit down over there and let the rest of the people run this case, but you are coming in and burning up your client's money.

"Now that's a tactical question, but one I can examine to say what's really going on, and I must confess I don't understand it" (Tr. of Proceeding, Jan. 16, 1988, p. 15, line 13-p. 16, line 4).

5. Mr. Bourke's defense of his client was funded by an insurance carrier, coverage which Mr. Bourke had secured under a provision for "bodily injury" or "emotional distress" injury. On July 7, 1988, the carrier filed suit against Mr. Bourke's client for a declaration of non-coverage. Continental Casualty Co. v. Bryant, et al., No. C-88-2577 CAL. The court granted summary judgment against

Mr. Bourke's client on December 22, 1988. Putting aside the allegations made by the carrier about Mr. Bourke's misconduct in securing the coverage, it is interesting that Mr. Bourke claims I lack "conscience and good judgment" because of the summary judgments in the Spendthrift Farm litigation against my clients. The summary judgment awarded against Mr. Bourke's client in the Continental Casualty matter would suggest that he suffers the same faults. But, of course, failure of a lawyer to win a case does not mean the lawyer acted improperly any more than winning necessarily proves the lawyer did right.

Mr. Bourke's views on litigation strategy were also disclosed in papers he filed in connection with a proposed settlement in the litigation. There, Mr. Bourke urged the court to alter the terms of a freely negotiated settlement to "maximize" the settling defendant's "insurance assets." Mr. Bourke proposed that the court have the settling defendant stipulate to a $8 to $15 million judgment accompanied by a covenant of plaintiffs not to execute beyond $500,000 on the judgment. The court properly failed to follow this dubious suggestion.

6. The substance of the allegations made by Mr. Bourke first came to light in a letter dated June 8, 1989 signed by ten members of the San Francisco Board of

Supervisors. That letter referred to "reports from several of the opposing counsel [in the Spendthrift Farm, Inc. litigation] that raised frightening questions about Mr. Walker's legal tactics and competence." The Supervisors' letter did not, however, name any sources for its allegations, although one of the opposing counsel in that litigation is the husband of San Francisco City Attorney Louise Renne who advises the Supervisors on legal matters and, incidentally, has asked to testify in opposition to my nomination. But Mr. Bourke's views about me are not shared these other lawyers for the defendants in the Spendthrift Farm, Inc. litigation. At about the same time I received a copy of Mr. Bourke's letter, I also received copies of letters about my nomination from other lawyers who opposed me in that litigation: Lawrence Pedley of Louisville, Kentucky, William E. Mussman, M. Laurence Popofsky of San Francisco. Copies of those letters are attached.

7. Having prevailed for his client in the court proceedings to date, it is striking that Mr. Bourke would use the Judiciary Committee in an apparent effort to litigate outside the courtroom some issues in the litigation. Proceedings collateral to the judicial process are simply not the place to deal with issues in litigated matters. To permit the adversarial process of litigation to spill over to other forums will inevitably diminish the zeal of lawyers demanded in litigation. Clients have a right to expect that zeal and working of the adversary process demands it.

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Of Counsel

October 17, 1989

The Honorable Joseph R. Biden, Jr.
Senate Committee on the Judiciary
Dirksen Senate Office Building
Room 224
Washington, D.C. 20510

Dear Senator Biden:

When you were last in Louisville I discussed with you my belief that Vaughn R. Walker is a highly talented lawyer who is extremely well qualified to serve as United States District Judge.

I understand that Mr. Walker's confirmation hearing is scheduled for the near future and I wholeheartily endorse his confirmation.

For the past several years Mr. Walker has represented clients who opposed clients of my firm in litigation in Federal Court. My experience with Mr. Walker during the course of that litigation proved him to be a man of his word and a gentleman. He is well educated, learned in the profession and, I believe, has all of the requisite qualities to be an outstanding judge.

Sincerely,

Lawrence L. Pedley

LLP/kaa
cc: Hon. Howard M. Metzenbaum

WILLIAM E. MUSSMAN
THREE EMBARCADERO CENTER
SUITE 1080
SAN FRANCISCO, CA 94111-4056

October 13, 1989

Re: The Nomination of Vaughn R.
Walker To A Federal
Judgeship in the Northern
District of California

The Honorable Howard M. Metzenbaum
United State Senate
SR-140 Russell Senate Office Building
Washington, DC 20510-3502

Dear Senator Metzenbaum:

Every experience must have a "first time," and this is the first letter I have written concerning the nomination of a Federal judge. I do so now because it is obvious to me that the opposition voiced to Vaughn Walker's nomination is both scurrilous and without substance.

It is without substance in the sense that most of his conduct of which his detractors complain was taken in furthering the cause of his clients in cases he was prosecuting or defending on their behalf. It is our obligation, as lawyers, to do just that - exert every effort within the bounds of the law and ethics to further our clients' interests.

I have known Vaughn Walker for many years - first when I was one of his supervising partners at Pillsbury, Madison and Sutro, later as a fellow partner at the firm, and finally when I was a client in my capacity as the Legal Vice President of a company represented by Mr. Walker's firm. Over all of these years, Mr. Walker's proficiency as a trial lawyer has been manifest, and never has there been even a hint that his conduct was improper, let alone unlawful or unethical. His reputation before bench and bar is impeccable, as I am sure every reputable lawyer and judge in the area will testify if asked.

I have also had the privilege of knowing Mr. Walker as a person as well as a lawyer. He is a man with true compassion for the less fortunate, with devotion to his country and to its system of justice, and with an admiration for natural beauty and for truth. We are fortunate to have one of his character and capacity be willing to forgo a lucrative practice to serve as a federal judge.

I was particularly distressed at the accusations made by Mr. Garth Guy - a defendant in a securities case in which Mr. Walker represented some of the plaintiffs. I actually represented Mr. Guy early on for the limited purpose of seeking reconsideration of Mr. Guy's motion to file a cross-complaint (which the court granted). In my dealing with Mr. Walker in that case on behalf of Mr. Guy, he was both courteous and accommodating. My observation was that all counsel, as well as Judge Legge, respected Mr. Walker both for the clarity of his presentations and his knowledge of the law.

I appreciate the opportunity to address you and your Committee by letter in support of Mr. Walker's nomination and in deprecation of the irrelevant and false charges that have been made by others. It will, in my considered judgment, be a great blow to the effective administration of justice in this area and to the nomination process as a whole if Mr. Walker's confirmation is denied on the record made by his detractors.

Very truly yours,

William E. Mussman

WEM:cc

cc: Senator Strom Thurmond
Senator Pete Wilson

HELLER, EHRMAN, WHITE & McAULIFFE
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November 1, 1989

EXPRESS MAIL

Senator Joseph R. Biden, Jr.
Chairman Senate Judiciary Committee
224 Dirksen Building
Washington D.C. 20510-6275

Mr. Vaughn Walker

Dear Senator Biden:

I write in connection with the nomination of Mr. Vaughn Walker for the position of federal judge in the United States District Court for the Northern District of California. I feel obliged to do so because of the letter directed to you by Mr. Thomas K. Bourke of Riordan & McKinzie, one of my co-counsel for defendants in the Spendthrift Farm Securities Litigation. That litigation is just now concluding in the United States District Court for the Northern District of California before the Honorable Charles Legge. In that connection, I am currently involved in settlement discussions with Mr. Walker and for that reason have been reluctant to write. However, since Mr. Walker's conduct of the Spendthrift Farm Securities Litigation has been made relevant to his nomination, not only by Mr. Bourke, but also by the Board of Supervisors of the City and County of San Francisco, I feel it imperative that I write now.

For the record, I am a lifelong Democrat who has supported Senator Cranston and every Democratic presidential nominee since my arrival in California in 1962. Prior thereto I was graduated from the Harvard Law School and Oxford University, where I studied jurisprudence as a Rhodes Scholar. I am a member of the American College of Trial Lawyers.

Prior to the Spendthrift Farm Securities Litigation I did not know Mr. Walker personally. I was, of course, familiar with his reputation as an excellent litigator who served his clients' interests vigorously and with a high degree of professionalism. That reputation was largely shaped by Mr. Walker's representation of major corporate defendants in antitrust and other matters.

It became my lot in the Spendthrift Farms Securities Litigation to represent a lawyer charged with securities fraud and professional malpractice in connection with a private offering of the securities of the Farm. As the litigation progressed my firm's client became the principal target. As a consequence, I served as lead lawyer for the defense at trial, which spanned three months last summer after several years of intense discovery. I shared the court room with Mr. Walker through the bulk of the trial until (happily) the case against my client was dismissed when plaintiffs rested. The remaining defendants were vindicated by the jury some two weeks later.

The litigation was a terrible ordeal for my client, a distinguished lawyer from Lexington, Kentucky. He was profoundly outraged by the charges against him and was, of course, pleased by the outcome. He personally believed the charges should never have been brought or should have been dropped somewhere along the line. As a consequence, I would not be surprised to learn that he has written to you expressing his strong negative views about Mr. Walker.

But strong emotions are the handmaiden to justice in our system of jurisprudence. My client's feelings in the Spendthrift Farm Securities Litigation are not uncharacteristic of those of dozens of other clients I have represented or who have faced what they consider to be unjust claims. Particularly in connection with securities litigation, the law invites plaintiffs who believe themselves wronged to instruct their lawyers to cast their claims as widely as possible, thereby often striking at professionals. While one can lament that development (as I do) it provides no basis for personal criticism of the kind that has been heaped upon Mr. Walker by virtue of his role in the Spendthrift Farm Securities Litigation.

From my personal observation of Mr. Walker as his adversary, let me say that he represented his clients' interests with the highest level of skill, integrity and tenacity. His written arguments, which were extensive, were ably done. His oral advocacy was effective, even if unsuccessful. From beginning to end Mr. Walker's performance was thoroughly professional. Of course he did not win; I and others did. But that simply reflects the fact that the case he was dealt by his clients proved to be weaker than he may have initially thought. As a consequence, theories of liability did shift and judgments made under the press of controversy did change. But all of that was ordinary and scarcely justifies the harsh language which appears in Mr. Bourke's letter. I have no doubt that Mr. Walker would do some aspects of the litigation differently, with the benefit of hindsight,— including, perhaps, dismissing Mr. Bourke's client earlier and perhaps settling with mine. But I know of no trial in which my judgments remained fixed and proved unassailable throughout and I dare say that experience is not unique. Put simply, nothing occurred in the course of the Spendthrift Farm Securities Litigation which caused me to doubt Mr. Walker's fine level of professionalism.

Based on my litigation experience, I categorically reject the suggestion that Mr. Walker is somehow vindictive, lacking compassion or otherwise bereft of those qualities which would make him a fine addition to the United States District Court for the Northern District of California. From all that I can discern here and in his other professional callings, Mr. Walker served his clients' interests -- right or wrong, popular or no -- as a skilled lawyer should. I believe him worthy of your and your Committee's support.

Yours sincerely,

M. Laurence Popofsky

cc: Senator Thurmond
Senator Wilson
Senator Cranston
Vaughn Walker, Esq. ✓

Senator **Metzenbaum**. And I also think that you ought to give us some confirmation about the letter that you wrote to the Olympian because Ms. Renne, you know, does point out that your letter is dated ten days after your conversation with her about having written such a letter. And I do not know that we have anything in the file at all about that letter actually having been written to the Olympian, whether or not the publisher or editor of that magazine will make a statement, whatever the case may be. But at this moment, we are blank on the subject.

Mr. **Walker**. Well, I have a copy of the letter. I think I have a copy of one or the other of the exchange with Ms. Renne, and I will dig those out of the file, Senator, and furnish those. As far as whatever happened to the letter once it was sent to the Olympic Club, I do not know what happened to it.

[Copy of letters follow:]

VAUGHN R. WALKER
P. O. BOX 7880
SAN FRANCISCO, CA 94120
(415) 983-1500

June 24, 1988

PERSONAL

Ms. Louise Renne
City Attorney
206 City Hall
San Francisco, CA 94102

Dear Louise:

The Recorder sure takes good pictures.

I am confident that the reporter who interviewed you did not read you my comments before the Judiciary Committee because I know you know the meaning of "palpable." Anyway, I am sure that The Olympic Club is moving in the right direction. The acceleration of minority applications cannot be ignored. There are many of us who are pleased with The Club's new (if overdue) development.

With best personal regards.

Sincerely,

Vaughn R. Walker

Louise H. Renne,
City Attorney

June 30, 1988

Vaughn R. Walker, Esq.
P.O. Box 7880
San Francisco, CA 94120

Dear Vaughn:

I received your recent letter concerning The Olympic Club and am surprised. Do you know something I do not? If anything, the attitude of The Olympic Club seems to have "hardened" since the recent Supreme Court decision. Please let me know if there is something I am missing.

Sincerely,

Louise H. Renne
City Attorney

LHR/sm

P.S. Just received a copy of the attached press release!

) 554-4283 Room 206 City Hall San Francisco 94102-4682

VAUGHN R. WALKER
P. O. BOX 7880
SAN FRANCISCO, CA 94120
(415) 983-1500

July 8, 1988

PERSONAL

Ms. Louise Renne
City Attorney
206 City Hall
San Francisco, CA 94102

Dear Louise:

Thanks for your June 30 letter.

I have not closely followed the litigation by your office against The Olympic Club. I am aware that several persons of minority background have quietly been elected to membership, a result that many of us have urged for some time and are delighted to see happen.

I also strongly favor voting privileges for the Club's women members and making all other membership privileges available to women. Recently, the Club has made access to the Club magazine available to those of us who favor change to publicize our views. I, for one, have taken advantage of that opportunity. The Club's president has scheduled informational meetings for the membership in September at which the litigation and other matters will be addressed.

While no one can predict how extensively the courts may permit government to regulate private club membership practices, the recent New York Club Association case suggests that the Supreme Court perceives that there are limits. It is not now possible to say whether The Olympic Club might be successful in placing itself beyond any such limits, but assertions that the New York case settles the issue are, at best, premature. Attempting to force the issue through litigation will be time consuming and, no doubt, expensive.

For those reasons, I believe it is more important than ever for those of us who favor voting and full membership privileges for both men and women to work within the Club to achieve that result. The ultimate objective which you and I share for women in The Olympic Club may be achieved in no other way.

With best regards.

Very truly yours,

Vaughn R. Walker

VAUGHN R. WALKER
P O BOX 7880
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(415) 983-1500

July 18, 1988

Mr. Roger Verran, Editor
Olympian
524 Post Street
San Francisco, CA 94102

Dear Editor:

The time has come to make voting and full membership privileges available to The Olympic Club's 800 or so women members.

There are many reasons I believe the Club should make this change: fairness, being only one. From the Club's point of view, the most compelling reason is enlightened self-interest. At least four points suggest that self-interest.

First, The Olympic Club's reason for being is sports. As women's role in business and professions has grown in recent years so, too, has there been a tremendous growth of interest in women's sports and increased participation of women in athletics. These developments have brought about better athletic competition and would do so in our Club. Today, young women are as likely to be interested in sports as young men. Our present membership practices date to an earlier time when this equality did not exist. We prevent, therefore, full accomplishment of the Club's basic mission by not extending full membership privileges to women.

Second, the majority of young professional and businessmen today no longer appear to favor single sex clubs. To those outside the Club we are developing a reputation as a sexist organization, which, however unfair, discourages the interest of many men in the Club.

Third, none of us need to be reminded that our former member Justice Anthony Kennedy found it impossible to reconcile his membership in the Club with his desire

EXHIBIT B

to advance in public service. I, too, have faced a similar dilemma, but it is not only Federal judges or nominees who are put on the spot. A lot of recent publicity aside, The Olympic Club has never been an "elitist" organization. We number among our members public servants who do not get a lot of limelight (e.g., police and firemen, FBI agents), many of whom are our best sportsmen and all of whom are next in line as targets of rules prohibiting or inhibiting membership in a single sex club.

Finally, "privatization" or cutting off non-member revenues seems the only reasonable way to comply with the San Francisco club ordinance. "Privatization" means either a radical reduction in the Club's budget or substantially increased dues and fees. Either course drastically alters the Club by denying its members important services and activities or making the Club too expensive for many of our most valued members.

We are shortchanging ourselves by not making women members fully equal to men in The Olympic Club. The many private clubs that have adapted to changing times by admitting women have made the transition with relative ease and benefit. We would be blazing no new trails but would do ourselves much good by following their example.

Very truly yours,

Vaughn R. Walker

Senator **Metzenbaum**. This is the letter having to do with an article in the magazine?

Mr. **Walker**. Yes. It was a letter to the editor. At the request of the committee I did talk to my secretary last night, and she had gotten a call from someone—I am afraid I cannot remember who it was. I think it was somebody at the Olympic Club, and they told her they were looking for the letter.

Senator **Metzenbaum**. They were looking for the letter?

Mr. **Walker**. That is correct. I believe the staff had approached the club, at least this is what I have second or thirdhand, and they did not know where the copy of the letter was. I have a copy of the letter that I sent.

Senator **Metzenbaum**. Well, the thing that is concerning me is that in your letter to Louise Renne dated July 8 you state that the club has made access to the club magazine available to those of us who favor change to publicize our views, and that you have taken advantage of that opportunity. Now that means it is an accomplished fact, but your letter to the Olympian is dated July 18, 10 days after. So you got an earlier letter saying that you have done something and a subsequent 10 day later date on the letter you actually sent.

Mr. **Walker**. Well, I am not sure that is an inconsistency, Senator, because I believe the opportunity was made available on July 1 or at least the——

Senator **Metzenbaum**. You say I have taken advantage of that opportunity.

Mr. **Walker**. That I have taken advantage, and I am writing a letter. That is correct, Senator.

Senator **Metzenbaum**. But the letter does not go for 10 days after that so how can you say you have taken advantage of it when you are writing to her? I am confused.

Mr. **Walker**. I do not believe that implies that I have already sent the letter, Senator.

Senator **Metzenbaum**. It clear as the devil says it.

Mr. **Walker**. No, I do not believe so.

Senator **Metzenbaum**. I mean it says I have taken advantage. It says that the club has made the access to the club magazine available to those of us who favor change to publicize our views. And that you have taken advantage of that opportunity. Now if that does not mean that you have already written the letter, I do not know how the English language can construe it any way different.

Mr. **Walker**. Well, I do not know what the circumstances are with respect to the exact timing. I may very well have had a draft of the letter prepared, was working on it. I simply cannot recall. What that shows, however, is that on July 1 this opportunity was made available and I was taking advantage of it, and I told Ms. Renne I was taking advantage of that. It is as simple as that, and I wrote the letter, Senator, and even if it came 10 days later it does not make any difference.

Senator **Metzenbaum**. It does make a difference. Although you may not think so, I think it does. Thank you very much.

Mr. **Walker**. Well, Senator, the point is that I spoke out in favor of the club changing its attitude with respect to the membership of women in it.

Senator METZENBAUM. All right. Thank you. Our last witnesses are Ina Gyemant—I am not sure I am pronouncing that correctly—Superior Court Judge, San Francisco; Diane Wick, Superior Court Judge, San Francisco; Kevin Wadsworth, former president of the Concerned Republicans for Individual Rights, San Francisco; and Charles Hanger, attorney of Brobeck, Phleger & Harrison. You have 3 minutes each. Please proceed, Ms. Gyemant. How do you pronounce your name?

Ms. GYEMANT. It is Gyemant, Ida Gyemant.

Senator METZENBAUM. Thank you.

STATEMENTS OF A PANEL, CONSISTING OF HON. IDA GYEMANT, SUPERIOR COURT JUDGE, SAN FRANCISCO, CA; HON. DIANE WICK, MUNICIPAL COURT JUDGE, SAN FRANCISCO, CA; KEVIN WADSWORTH, FORMER PRESIDENT, CONCERNED REPUBLICANS FOR INDIVIDUAL RIGHTS, SAN FRANCISCO, CA; AND CHARLES HANGER, ATTORNEY, BROBECK, PHLEGER & HARRISON, SAN FRANCISCO, CA

Ms. GYEMANT. I am testifying before this committee to support and commend Vaughn Walker in his quest for a judgeship on the District Court in the Northern District of California. I feel I may be able to shed some light on the issue of fairness and particularly on Mr. Walker's treatment and attitude toward women. In 1979 I made a decision to campaign for election to an open seat on the San Francisco Municipal Court. I was opposed in that election by three men. In California, judgeships are non-partisan, but as many of you may know most of your support in an election comes from either political clubs or from persons who are active in politics. I am a Republican and one of the men that I opposed in that election was a Republican.

Nevertheless, I had Vaughn Walker's support for my candidacy, and I had not only his name as support, but he also represented me in two lawsuits which arose during that campaign. In the irst lawsuit he stopped one candidate from improperly using the ballot designation of judge pro tem, and in the second, he successfully interpleaded to block the elimination of the absentee ballots from the election, thus assuring my victory.

Mr. Walker supported me over my male opponents at a time when to support a women was not as acceptable as it is today. He certainly did not then and has not in my experience since acted like someone who prejudiced a prejudice against women. As a litigant, as a client of Mr. Walker's I was able to evaluate his performance as an attorney, and in preparation of this testimony I have reflected back on that performance.

Of course, I am not reflecting back with the additional experience of ten years on the bench. In my experience, Mr. Walker has acted with integrity, with honesty, with intelligence and with a sense of fairness. And although it is not part of my statement, Mr. Chairman, I know it is an issue that concerns you. So I would like to briefly address the issue of the club membership, and whether there should be a presumption of disqualification for past membership.

I admire the fact that I heard you say that you began to become concerned with discriminating clubs in 1979. I think that the rest of the nation was far behind you.

Senator **Metzenbaum**. I became concerned in 1979?

Ms. **Gyemant**. I thought that that was your statement you said earlier today.

Senator **Metzenbaum**. No way. I became concerned. I sued two clubs in Cleveland probably 1940 or so. It was a long ways back, long ways back.

Ms. **Gyemant**. Then I am even more impressed.

Senator **Metzenbaum**. I won the cases, too.

Ms. **Gyemant**. Because as you know, it was not until 1984 that the ABA passed their canon which governs the Federal court judges, and it was not until 1986 that the California judges passed their canon, and I want to add to the part of the canon that you read, that the ABA canon also reads ultimately each judge must determine in the judge's own conscience whether an organization of which the judge is a member practices invidious discrimination.

I would like to give you briefly some of my credentials in this area. I was just—if I could just have about 30 more seconds—I was on the board of the California Judges Association and the liaison to the ethics committee when this question came before the board, and I am the one who made the motion on the floor of the annual meeting to amend the code of judicial conduct in California to include this same canon although we took out the language that gave the judge the discretion to decide whether the club was discriminatory or not.

And the focus or the discussion if you looked at our annual meeting was not only on clubs such as the Olympic Club, but it was also on the Rotary Club because in California the word we got was that in the small counties the women judges had a hard time getting reelected. Women lawyers had a hard time becoming judges, and women in business had a difficult time making contacts because the power of those communities was in the Rotary.

Senator **Metzenbaum**. Thank you very much, Judge.

Ms. **Gyemant**. If this Committee takes the position that all past Rotarians who are judges are presumptively disqualified, I do not think I have to explain to you what effect that would have on our judiciary, I think even on a national level.

Senator **Metzenbaum**. Thank you very much.

[The statement of Ms. Gyemant follows:]

Superior Court of California
San Francisco

INA LEVIN GYEMANT
JUDGE

STATEMENT BEFORE THE SENATE JUDICIARY COMMITTEE

NOVEMBER 9, 1989

Superior Court of California
San Francisco

INA LEVIN GYEMANT
JUDGE

November 9, 1989

Mr. Chairman
Members of the Committee
Senate Judiciary Committee

I am testifying before this Committee to support and commend Vaughn Walker in his nomination as a United States District Court Judge for the Northern District of California.

An avenue of inquiry of this Committee is Mr. Walker's fairness. I may be able to shed some light on a fairness issue which is of utmost importance to me - Mr. Walker's treatment and attitude toward women.

In 1979, I made a decision to campaign for election to an open seat on the San Francisco Municipal Court. I was opposed in that election by three men. While judgeships in California are non-partisan, much of a candidate's support comes from political clubs and persons active in political party politics. I am a Republican and one of the three men I opposed was a Republican. Nevertheless, I had Vaughn Walker's support for my candidacy. And I had not only the support of his name, but he represented me in the two lawsuits which arose during the campaign. The first suit stopped one candidate from using the designation of "Judge Pro Tem" on the ballot and in the second, he successfully interpleaded to block the elimination of the absentee ballots from the election, thus assuring my victory.

Mr. Walker supported me over my male opponents at a time when to support a woman was not as acceptable as it is today. He certainly did not then and has not since acted like someone who harbored a prejudice against women.

As a litigant, as a client of Mr. Walker's, I was able to evaluate his performance as an attorney. In preparation for this testimony, I have reflected back on that performance.

Of course, I am reflecting back now with my own additional experience of almost ten years on the Bench.

Mr. Chairman
Members of the Committee
Page 2
November 9, 1989

In my experience, Mr. Walker has always acted with integrity, honesty, intelligence and with a keen sense of fairness.

I would strongly recommend a vote to confirm Vaughn Walker to the United States District Court for the Northern District of California.

Respectfully submitted,

Ina Gyemant

INA LEVIN GYEMANT
Judge of the Superior Court

ILG/bb

Senator **Metzenbaum**. Judge Wick.

STATEMENT OF HON. DIANE WICK

Ms. **Wick**. I appreciate your elevating me to the Superior Court, but I really am a municipal court judge in San Francisco. I also appear——

Senator **Metzenbaum**. It is all right with me.

Ms. **Wick**. Perhaps you could place a call to the Governor. I also appear before you today to demonstrate Vaughn Walker's strong support for women in the legal profession. By way of introduction, I was sworn in as a municipal court judge in San Francisco in January of this year. Prior to that I was an Assistant District Attorney and a Deputy City Attorney in San Francisco as well as an attorney in private practice.

At the time of my appointment to the bench, I was president of the Lawyers' Club of San Francisco which I believe is the third largest voluntary bar association in California, and I was only the second woman to be so honored. During last year's hearing on Mr. Walker's nomination, as we have all learned again today, you heard from another former president of the Lawyers' Club, Ephraim Margolin. The Lawyers' Club was formed by independent, solo, or small firm practitioners who believed that they were not adequately represented by the establishment-dominated traditional bar association.

I think it is an accurate statement that at the State bar convention each year the Lawyers' Club is the most vocal of bar groups on the thorny, hotly debated issues of our society today. Shy, its members are not. Notwithstanding that Mr. Walker is a partner in perhaps the most establishment of law firms in San Francisco, he too was elected to the presidency of the Lawyers' Club, and I believe that is a tribute to the respect afforded him by his peers including many of the most politically liberal attorneys in the Bay Area today. I became an active member in 1980, and in 1982 was asked to serve on its board of governors after being strongly supported by Mr. Walker for that position.

In 1984 I was elected its secretary, traditionally the first step in moving up the officers' chairs to the presidency. Again, my election was the result of Mr. Walker's playing a very strong role in my candidacy. I have known him for many years, and when I announced in 1975 that I wanted to go to law school to become an attorney he at that time was very supportive just as he was when I announced that I indeed wanted to apply for a position on the bench.

He was again very, very supportive. So while I have never handled a case involving him, I personally know that he has a fine reputation as an attorney. And from my association of more than 15 years, I know him to be a very fair, thoughtful and compassionate human being. As a member of the California judiciary, I understand the rule of a judge and the duty and the responsibility that goes with that position. I have no reservation in recommending him to the United States Senate and hope that he is confirmed for that position. Thank you.

Senator **Metzenbaum**. Thank you very much, Judge Wick. This committee is very fair and we even hear from Republicans. So we will hear from you, Mr. Kevin Wadsworth, former President of Concerned Republicans for Individual Rights.

STATEMENT OF MR. WADSWORTH

Mr. **Wadsworth**. Thank you, Mr. Chairman, for the opportunity to have a Republican appear and discuss. I also wanted to thank you, Mr. Chairman, and your colleagues for the help you gave us in the aftermath of the October 17 earthquake and so fast. It was very much appreciated.

Senator **Metzenbaum**. Thank you.

Mr. **Wadsworth**. I am currently employed as an officer for a healthy savings and loan association. I served in the Marine Corps. I am a disabled American veteran. As a Republican who happens to be gay I have often been at odds with my party and in fact bolted the Republican Party much too often to support Democratic candidates. I am mention this only to stress that I have never and will never support candidates or issues detrimental to myself or others due to sexual orientation or any other type of discrimination.

I am here to support Vaughn Walker for two reasons. One, when I was elected nearly 10 years ago to the San Francisco Republican County Central Committee as one of the first up-front gay Republican individuals to do so, Vaughn was there to support me, has been supportive then, and has been supportive since. I can assure you that other Republicans were not and have not been as supportive.

The second reason is I was very involved in the United States Olympic Committee issue which was on the June 1988 ballot in San Francisco. I took the time to research the issues involved and particularly those legal issues relative to Vaughn Walker's representing USOC, U.S. Olympic Committee. The results of my research are available to you if you should wish.

In essence, I find that Vaughn Walker conducted himself ethically and fairly at all times as he represented USOC. I also find that the gay press has chosen to ignore the facts of the case as the facts do not support their party line opposition to the Olympics or Vaughn Walker. In closing, I wish to stress that I do not ever consider supporting individuals whom I believe would be in any way detrimental to my wellbeing, the wellbeing of the gay community or the wellbeing of the greater San Francisco community. I have known Vaughn for ten years. And I find him to be fair, honest, open-minded and willing to listen to others.

As a Republican, I certainly wish we had more of his caliber. As a voting citizen, I really do not care what political party this type of individual beiongs to. I honestly believe that Vaughn Walker will when confirmed do a damn good job for you and for us. Thank you.

Senator **Metzenbaum**. Thank you very much.

[The statement of Mr. Wadsworth follows:]

Remarks by Kevin W. Wadsworth

Thank you, Senators, for this opportunity to appear before you on behalf of Vaughn Walker. Let me first thank you and your colleagues in Congress for the help you have provided us in the aftermath of the October 17 earthquake.

I am currently an officer of a **healthy** national savings and loan association. I am a relatively active Republican. I am also homosexual - considered in San Francisco to be a gay activist. As a gay Republican I have often been at odds with my party and have in fact bolted the party to support Democratic candidates on too many occasions. I mention this only to stress that I have never and will never support candidates or issues detrimental to myself or others due simply to sexual orientation.

Please note that being a gay Republican is not at all very easy. Many consider the term "gay Republican" to be a contradiction. We once had, and may still have, a political club in San Francisco called "Disabled Democrats." Many considered *that* to be redundant.

I am here to support Vaughn Walker for two reasons. One, when I was first elected to the Republican County Central Committee in San Francisco - as one of the first upfront gay Republican individuals to do so - Vaughn was there to support me. I can assure you that others were not so supportive.

Two, I was very involved in the United States Olympic Committee (USOC) issue which was on the June 1988 ballot in San Francisco. I took the time to research the issues involved -- and particularly those legal issues relative to Vaughn Walker's representing the USOC. The results of my research are available to you should you wish. In essence, I found that Vaughn Walker conducted himself ethically and fairly at all times as he represented USOC. I also found that the gay press chose to ignore the facts of this case as the facts do not support their party-line opposition to the Olympics or Vaughn Walker. The Chinese certainly have no monopoly on the ability to ignore facts in order to justify and support a party line.

In closing, I wish to stress that I would not ever consider supporting an individual ~~whom I~~ believed would be in any way be inimical to my well being, the well being of the gay community, or the well being of the greater San Francisco community. I've known Vaughn for ten years and I find him to be fair, honest, open minded, and willing to listen to others. As a Republican, I certainly wish we had more of his caliber; and as a voting citizen, I really don't care what political party this type of individual belongs to. I honestly believe that Vaughn Walker will, when confirmed, do a damn good job.

San Francisco and the United States Olympic Committee

When the City that Knows How - - Forgot

Kevin W. Wadsworth
May 4, 1988

We all know what it is like to be taken. We have all been taken at one time or another by false advertising, "free" offers, a "sale" more expensive than the previous price, or a candidate who says anything to get elected. Sad to say, the gay community of San Francisco has been taken, the Bay Area lost an opportunity to host the Olympics, and San Francisco has once again displayed a flake image which, this time, seems somewhat deserved.

Like many residents in the Bay Area, this writer reacted with anger upon reading we lost an opportunity to host the 1996 Olympics - due apparently to the demands placed upon the Bay Area Sports Organizing Committee (BASOC) and the United States Olympic Committee (USOC) by certain politically-correct gay "leaders" and politicians of San Francisco. And, like many others, I was angry enough to want to know exactly what the hell happened. The information made available by mainstream as well as gay press was, however, strictly emotional: the former deriding yet another example of San Francisco Supervisor Harry Britt's ineptitude while the latter ragged on about discrimination, power, and "rights."

There appear to be three basic issues: 1) the legal aspects of Olympic trademark, 2) the lien placed against Tom Waddell's home, and 3) the five demands presented and supported by San Francisco Mayor Art Agnos, Harry Britt and the gay/lesbian "leadership." The demands are: a) for the USOC Foundation to commit funds to the Gay Games; b) to have gay and lesbian representation on the Executive Board of USOC, c) to have USOC lobby the Immigration and Naturalization Service (INS) to change its immigration status with regard to gay individuals, d) to have USOC publicly declare a statement of non-discrimination against gays and lesbians, and e) to have USOC lobby Congress to grant the Gay Games the right to use the word "Olympic."

After taking the opportunity to review correspondence and discuss this issue with various individuals involved with BASOC, I arrive at the embarrassing conclusion that, with one exception, the United States Olympic Committee acted correctly, legally, and in good faith. I also conclude that the challenge to the USOC trademark is and was logical, certainly legal, and raised very appropriate questions regarding First Amendment rights. But, past this, the gay community has been taken and embarrassed by its supposed leaders.

Legal Aspects of the Olympic Trademark

The trademark is critical to USOC's fundraising abilities, considering our American Olympic teams do not receive government funding - unlike our honorable athletic competition from other countries. Monies raised from granting exclusive rights to name and trademark are important to the financial success of the modern Olympiad; as was demonstrated in Calgary Los Angeles.

The Amateur Sports Act of 1978 gives USOC full legal rights to Olympic symbols, marks and terminology which, under trademark law, precludes their use by others. The act stipulates that those organizations showing a history of having used the word "Olympic" prior to 1950 are exempt. USOC has consistently declined to license its name and trademarks for non-monetary purposes except in three instances; the Explorer, Junior and Special Olympics - each of which implements a specific Congressional mandate included within the act.

USOC maintains a nationwide monitoring service to identify instances of organizations using the word or symbols for the Olympics. Once identified, an offending organization receives a standard "cease and desist" letter from USOC. A second and third letter are used when necessary; increasingly stronger in statement. As monies raised for USOC are for athletic events and not litigation, USOC has traditionally attempted to use negotiation and persuasion to enforce its right of trademark and has rarely used the courts. One specific exception is, of course, the "Gay Olympics."

Tom Waddell, as founder and Chairman of the "Gay Olympics," received the first standard "cease and desist" letter and, in an exchange of letters, responded to USOC in writing -- stating the "Gay Olympics" would cease and desist and would be known as, instead, the "Gay Games." Some four weeks later, however, USOC received a letter stating the decision to cease and desist had been reversed and the Gay Games would continue as the "Gay Olympics." When widespread publicity followed, USOC had no choice but to challenge this formal and very public agreement reversal. Under trademark law, if you don't protect your trademark you can lose it.

Have others used Olympic trademarks and not faced legal challenge by USOC? Certainly. It is not in the best financial interest for USOC to go to court for every Crab Olympics, Eel Eating Olympics, or Zucchini Olympics which pop up in contest-loving America. USOC funds are for amateur athletic events, not attorneys. USOC does, however, look closely at those infringing upon the trademark who meet two specific criteria: do they imitate the Olympics and do they have international impact. The strategy of using negotiation and persuasion, instead of the courts, has proven relatively successful. The most recent USOC success has been with the California Police Officers Association (CPOA). Beginning in 1989, the CPOA will discontinue using "Olympic" for its annual athletic event.

The key issue, as regards trademark, is the Gay Games first committed to not use the word Olympic and then, in a wall publicized move, reversed their decision. USOC had no choice, under United States laws of trademark, but to legally protect its rights under the Amateur Sports Act of 1978. USOC would have initiated this legal challenge under the same circumstances with any organization; gay or not.

Conclusion: USOC acted correctly.

Lien Against the Waddell Home

The lien placed against Tom Waddell's home is a very emotional issue. To understand the issue requires an understanding of legal process.

First, offices of any organization, profit or not-for-profit, may be held legally and financially liable for damages assessed the organization for which they are responsible. Should, for example, the Golden Gate Business Association or the San Francisco Chamber of Commerce be successfully sued, their officers and board may be held personally liable for damages. The same is true of business boards of director, which explains why insurance for board members is very expensive and practically unattainable, and why many successful business people refuse to accept board appointments in today's litigation-minded environment.

Second, laws exist to deter nuisance suits. Once such law states the losing party is liable for court costs and/or legal costs encumbered by the winning party in a law suit. Thus, when the Gay Games lost their first court case, the law allowed that USOC be able to recover proper legal costs. Under the trademark laws, this can include attorneys' fees. As the Gay Games had no assets, the only assets available to satisfy the court award were Waddell's. USOC filed a notice of its claims (lien) on Waddell's real properties.

The Gay Games appealed this first court decision. The Court of Appeals found in favor of USOC but questioned the amount awarded to USOC. This automatically made the lien moot and not effective as a lien must be in an amount certain. The attorneys for the Gay Games wrote to USOC asking that USOC remove the lien. The attorneys for USOC, preparing now for the Gay Games' Supreme Court appeal, responded that USOC would not oppose removal of the lien by the Gay Games attorneys. The attorneys for Waddell and the Gay Games did nothing at this time.

USOC's attorneys went further and wrote to the personal attorney for Waddell indicating that she could use the letter to prove that the lien was ineffective. None of the attorneys for the Gay Games or Waddell did anything about the lien(s) until just days prior to Waddell's death -- when formal (though not required) releases of the lien(s) were sent to USOC's attorneys. These releases were signed and returned promptly.

The releases arrived two days prior to Tom Waddell's death.

Conclusion: The attorneys for the Gay Games could have lifted the lien much earlier and could have spared Tom Waddell and his family much worry. USOC viewed this turn of events in legal terms instead of its personal and emotional impact upon a dying Tom Waddell, his family, and individuals in San Francisco who knew and loved Tom. The attorneys for the Gay Games appear to have been using a strategy designed to strengthen their Supreme Court appeal and to engender emotional public support. Unfortunately, it created undeserved ill-will towards USOC. USOC's mistake was in not recognizing the strategy aimed at public reaction and countering it by explaining their position to the gay community.

It appears also that certain gay "leaders" wish to play with the "big boys" but protest loudly at being forced to play by the rules. Just as with gambling, if you cannot afford to lose, you shouldn't play -- and if you play and lose, you pay.

One must wonder whether Tom Waddell was ever advised of the possible legal and financial risks he would possibly face, as an officer of the Gay Games, prior to his making the decision to reverse his written agreement with USOC.

Demand to Fund the Gay Games

The demand that the USOC Foundation provide funding to the Gay Games is somewhat moot. BASOC notes in its Statement of Principles and Non-Discrimination of February 29, 1988, that it has been "organized to promote, coordinate, and support amateur athletic competitions and major sports activities in the San Francisco Bay Area..." Both USOC and BASOC have indicated their intent to support the Gay Games in the same manner they support other athletic events.

Conclusion: this demand is something to be negotiated and planned for, just as all other Bay Area athletic groups must do.

Demand for Representation on the USOC Executive Board

The demand that gays and lesbians have representation on the Executive Board of USOC is, quite frankly, elitist and presumptuous. The Executive Board of USOC is not made up of appointed individuals but is, instead, comprised of representatives from various Amateur Athletic Federations. Minority representation on USOC is, then, dependent upon establishing Amateur Athletic Federation status; which the Gay Games or other gay athletic organizations may do.

Conclusion: this demand is unique (read elitist and presumptuous) in that it is for only gays and lesbians and does not include other minorities. That other minorities are represented is due to their understanding the USOC Charter and establishing a qualified and recognized Amateur Athletic Federation. USOC cannot, under their Charter or established, grant such a demand for separate and unique representation.

Demand Regarding Immigration and Naturalization Service

The demand that USOC lobby the Immigration and Naturalization Service to change the immigration statuses as they relate to homosexuals is contrary to USOC's unique relationship with the International Olympic Committee (IOC) and the IOC's requirement of adherence to non-political activity. Due to the nature of athletic events, USOC must strive to avoid all political involvement. The success of USOC is dependent upon maintaining the support of the American public and that support could be permanently damaged were it to take stands and lobby on behalf of issues in response to pressure from governmental or public organizations; issues such as immigration, abortion, or military funding. It is enough that USOC and the IOC must put up with situations such as Adolph Hitler's political use of the Berlin Olympics, the United States boycott of the Moscow Olympics to protest the invasion of Afghanistan, and the Soviet Union's retaliation at the Los Angeles Olympics.

Rule 59 of the Olympic Charter states "The Olympic identity card or accreditation card establishes the identity of the holder and constitutes the document authorizing entry into the country in which the city organizing the Olympic Games is situated." Asked by California State Senator Quentin Kopp (I-San Francisco) to clarify BASOC's understanding that "the President of the United States acting through the Department of State must certify that the Olympic identity card will be valid in place of a visa during the period of the Olympic Games, irrespective, among other things, of sexual orientation of the bearer of such Olympic identity card," USOC responded by stating:

> "The IOC charter, Rule 59 does, in fact, state what you have quoted and the successful bid city would have to obtain that assurance from the USA government. In the past, the President and the Department of State have not, in advance, agreed to be bound by this Rule, but as a practical matter, the Rule has been generally followed. If there were to be any deviations from this Rule on the part of the United States government, it would more than likely occur with regard to political issues related to Communist countries and athletes from such countries who may attempt to enter into the United States under the provisions of the Rule. Certainly, we know of no instance where sexual orientation of a bearer of an Olympic identity card was an issue, and the USOC would strongly support the athlete if such an issue arose."

Conclusion: this demand, though a valid concern, is not addressed to athletes but to all immigration applicants and is not one which USOC can honor in a political manner. To the best of their ability, however, USOC honors the intent and purpose of the demand by stating publicly they will strongly support an athlete should sexual orientation become an issue due to INS statutes.

Demand for a Non-Discrimination Statement

The demand that USOC publicly declare a statement of non-discrimination against gays and lesbians was met firmly by both BASOC and USOC. On February 29, 1988, BASOC adopted the following (of eight principles):

(5) BASOC accordingly does not discriminate on the basis of race, color, creed, national origin, ancestry, age, sex, sexual orientation, or disability in its membership policies, or programs.

(6) BASOC indeed believes that its bid proposal to host the Games of the XXVI Olympiad in 1996 is significantly enhanced by the diversity of races, cultures, and lifestyles which are represented in the San Francisco Bay Area.

(7) In consequence, BASOC has undertaken and pledges to ensure that the San Francisco Bay Area's many communities, including specifically the gay and lesbian community, will be represented in BASOC's membership and in all BASOC programs and activities.

(8) Moreover, BASOC welcomes all San Francisco Bay Area citizens in its efforts to promote amateur sport, to host the Olympic Games, and to exemplify the traditions and ideals of the Olympic Movement.

On March 15, 1988, USOC wrote Mayor Agnos and stated:

> "The USOC has never discriminated against gays or lesbians. We do not do so now. Many Olympic athletes now and in years past have openly acknowledged their homosexuality. Tom Waddell, who was instrumental in organizing the "Gay Olympics," was a member of the United States decathlon team in the 1968 Olympic Games at Mexico City. We are proud of the accomplishments of these Olympians and Tom Waddell's untimely death, in particular, was felt deeply by us. We welcome the opportunity... to reaffirm our well-established practice of treating Olympic athletes without regard to their sexual orientation."

Conclusion: BASOC and USOC have clearly and firmly stated, for public knowledge, their unequivocal support for non-discrimination.

Demand to use the word "Olympic"

The demand to have USOC lobby Congress to grant the Gay Games the right to use the word "Olympic" places USOC in much the same position as the demand for lobbying the INS. Once again, USOC is presented with demands of a political nature to which they cannot acquiesce under any circumstances. It is almost as if these demands were constructed in order to ensure that USOC could not meet gay "leadership" terms and, as a consequence, ensure that USOC would not consider San Francisco for the 1996 Olympiad.

Additionally, others who have used the word Olympic and do not now use or may be discontinuing the use of the word Olympic have just as much right to make such a demand. What right do gays and lesbians have to place themselves above all others who may feel justified in using the word Olympic? We are not quite that special.

Conclusion: this demand needs to be placed before the organization which has sole power over who may be exempted under the law: Congress. A novel approach (for this "gay leadership," at any rate) would be to prepare a logically drafted case for consideration.

Planning and Financing

Two other issues have arisen since these demands were made. One, it has been claimed that BASOC presented a poorly organized plan for hosting the Olympics. For anyone who has seen the plan, this charge is plainly ludicrous. The research and presentation prepared by BASOC is one of the most professional and inclusive documents this writer has seen in some time. For those who are interested, I am sure BASOC would be more than pleased to al: public review. As it is a highly professional and expensive document, they are not available for general distribution. However, now that we've lost the 1996 Olympics, perhaps BASOC will consider selling the documents as souvenirs in order to recoup a portion of the tens of thousands of dollars spent in their attempt to bring the Olympics to the San Francisco Bay Area.

The second new issue is one of financing. Some have claimed that San Francisco and the Bay Area cannot afford the Olympics. It is another way of simply saying that what Calgary and Los Angeles accomplished financially could not be done by San Francisco. It doesn't seem to be bothering other cities in the United States and throughout the world; and it certainly didn't bother the six counties and 45 municipalities in the Bay Area who subscribed and supported BASOC's bid. Calgary, in fact, is properly proud of the profits recently made by their governmental entities and private business. Perhaps that old San Francisco saying, the City that knows how, is no longer appropriate.

Quentin Kopp's Gay Advisors

The headline of the April 14, 1988, Bay Area Reporter (a San Francisco gay weekly newspaper) reads: "Kopp's Gay Advisors Threaten to Walk Out: Accuse Kopp of 'Generating Hostility' With Olympics Ballot Initiative."

Twelve members of Senator Kopp's Gay and Lesbian Advisory Committee wrote a letter, dated April 4, stating "We strongly urge that you withdraw your support for the Olympics referendum. In the absence of such a decision, we cannot in good conscience continue in affiliation with your office."

The gay "leadership" of San Francisco does not want this issue on the ballot; for good reason. A great majority of San Franciscan's wanted the Olympics brought to the San Francisco Bay Area and disagree with the narrow demands imposed by these politically-correct "leaders."

As a majority of San Franciscan's do not read the Bay Area Reporter, it is worth briefly reviewing the letter and its interesting logic.

The letter continues by reaffirming the Advisory Committee's support for "the official city policy inviting the Olympics to San Francisco under terms which promote fellowship among all our citizens." Among who? Many of our citizens not only resent the imposition of these non-negotiable demands but realize the demands were certainly not presented to "promote fellowship." The analysis of these demands clearly indicate they are, for the most part, elitist and entirely one-sided.

Continuing, these Committee members state "We are disappointed that you have not worked more towards reaching a community-wide consensus in this matter." Translation: "We have already decided this issue. How dare you suggest a referendum by the voters." And what, by the way, could be more community-wide than having a public vote on the matter?

These "leaders" claim a vote will only be "generating hostility toward gay and lesbian San Francisco." If there is any hostility generated, it will be aimed at these so-called "leaders" - as well it should. These gay "leaders" blundered badly and need to be made aware that others do not appreciate their tactics. Proposition M is not a gay referendum. Voting yes does not translate into being anti-gay. Voting yes will, however, clearly communicate San Francisco's displeasure with certain "leaders." Further, voting yes will effectively void the vote by Supervisors Britt, Hongisto, Nelder, Silver, Walker and Ward, and signed by Mayor Agnos, which made these demands an official policy of the City and County of San Francisco.

The letter further states "It is now clear that your referendum can have no practical impact. What this referendum will do, however, is deeply divide San Francisco and to serve to excite negative feelings toward the lesbian and gay community. This referendum can no longer do anything positive to help San Francisco or to serve its people. It can only serve to inflame hostilities between our citizens."

It is obvious this gay "leadership" resents opposing views or disagreement, and it is unfortunate they assume that to disagree with them is divisive and negative. It is equally obvious they will use any type of argument or pressure in order to pull the proposition off the ballot. And the pressure is extremely intense; upon not only Senator Kopp, but upon the Supervisors who placed the referendum on the ballot: Tom Hsieh, Willie Kennedy, Bill Maher, and John Molinari.

There have been numerous comments and commentary lately regarding how the gay community doesn't know how to pick its issues. It seems as if everything is a threat to gays and lesbians; the Olympics, the U.S.S. Missouri, and Willie Brown; gay boycotts against Kellogg's (Nut & Honey), KQED-TV and radio, Coors, San Francisco Chronicle and Examiner, Time Magazine, Burroughs Wellcome, VISA, Great Britain, Newsweek, Master Card, Cosmopolitan and who knows what else. Reminds me of the old saw about the boy who cried "wolf."

Others have commented that these gay "leaders" need to keep the political pot boiling in order to maintain their political positions and keep their activist coalitions organized and busy. As a consequence, any issue is fair game for attack by this "leadership." Small wonder, then, that Congressman Barney Frank, our highest and most prominent elected gay official, was booed (by a vocal minority) at a 1988 conference of activists where he stated that to work within the system far better serves the gay and lesbian community's future. Harry Britt, by contrast, contended that the gay community needs to and will continue its use of confrontation tactics. The success of either will depend upon two factors: whether these self-anointed "leaders" can deliver votes, and whether those who agree with Barney Frank, as do I, will become active themselves in challenging these "politically-correct leaders."

The perception among many that my community is immature, negative and selfish seems to have some basis in fact. How unfortunate it is that an incredibly sensitive, caring, active and hard-working community can be stuck with such an image.

Moving Forward

To summarize, I firmly believe the United States Olympic Committee was caught in a political buzzsaw. All I've read leads me to conclude that USOC's intentions were and are sincere and in keeping with the ideals and traditions of the Olympic Movement. That the Supreme Court was split in its five to four decision in favor of USOC is, first, indicative of exceptional work by attorneys for the Gay Games and, second, suggests there are important questions regarding the Amateur Sports Act of 1978. It is a topic to which I hope our Congressional delegation will give their attention. In the meantime, and unfortunately, USOC has been given a reputation within the gay community which is not deserved. And the at-large gay community has again been dealt a serious blow by certain "leaders" who believe the only way to make progress is to confront others with non-negotiable demands.

There is no doubt, also, that Senator Kopp could have avoided certain problems had he more closely coordinated BASOC plans and strategies with the City and County of San Francisco. That then-Mayor Dianne Feinstein was not a key player in the process was a critical mistake and the decision to keep the Mayor out of a central and decision-making role was evidently political and much too typical of why **the City that knows how** has been failing.

As for gays and lesbians, the Bay Area should understand that their gay community is just like other communities; we are not monolithic and we do not always agree on the issues. Simply because Harry Britt or other "politically correct leaders" say they are doing the gay community a favor does not mean others in the gay community approve.

The Bay Area Sports Organizing Committee and the United States Olympic Committee both deserve credit for their hard work and very public statements in support of non-discrimination and minority participation, and the ideals of Tom Waddell deserve that we host the world's supreme athletic event. I, for one, support and shall vote for Proposition M on the San Francisco June 1988 ballot. As this issue is bound to be debated for some time to come, the financial and social conditions which San Francisco needs to consider - as does any other bidding city - will certainly have to be determined and negotiated. Hopefully, future conditions will be logical, practical and fair to all concerned. In the meantime, perhaps the message sent by the passage of this proposition will afford the Bay Area an opportunity to host the Olympics at another time in our future.

Postscript: Proposition M won with over 60% of the vote.

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Kevin Wadsworth, 41, is a twelve year resident of San Francisco and the Bay Area. For years active in, and often at odds with, the Republican Party, he has served in the United States Senate under Edward J. Gurney, as city administrator in Orlando, Florida under Mayor Carl Langford, as director of government affairs for the San Francisco Chamber of Commerce, as President of the predominantly gay Concerned Republicans for Individual Right, and was elected for three terms to the Republican County Central Committees of San Francisco and Solano Counties. He served four terms on the Employment Committee of the San Francisco Human Rights Commission and was recently appointed to the Minority/Women/Small Business Advisory Committee.

Currently an officer of a healthy national savings and loan association in San Francisco, Wadsworth and his lover of eleven years own a home in Placerville, Ca.

Hon. Joseph Biden
United States Senate
Washington, D.C. 20510

April 5, 1989

Dear Senator Biden:

I read recently where California's senior Senator, Alan Cranston, sent you a five-page letter challenging federal judge nominee Vaughn Walker's attitudinal and sensitivity eligibility.

Please allow me to kindly disagree with Senator Cranston.

It is true that Mr. Walker is not "politically correct." He has taken issue with San Francisco's gay community and was reluctant to resign from an all-male club.

As an individual who happens to be gay, I also have taken issue with the so-called "politically-correct leadership" of San Francisco's gay community. I, and many others, often find their actions and words to be embarrassing. Further, I would not ever consider resigning from my all-male national fraternity (please don't assume that my fraternity is gay simply because I am a member; my fellow member, Ronald Reagan, wouldn't be amused).

As for the "Gay Olympics" issue, enclosed for your information is a bit of research I conducted, for my own peace of mind, whilst this issue was being debated and on the ballot in San Francisco. I conclude, based upon the enclosed, that Vaughn Walker conducted himself ethically and fairly at all times during this very unfortunate case.

I've known Vaughn Walker now for some ten years. Though I would not presume to call Vaughn a friend, he is certainly an acquaintance whom I wouldn't hesitate to call upon for help. And he indeed was of help to me when, in 1979, I was elected as the first "known" gay person to the Republican County Central Committee of San Francisco. Certain others, less sensitive than Mr. Walker, were not, shall we say, very supportive.

Though my input and support for Vaughn Walker's nomination certainly doesn't have any weight compared to Senator Cranston's, I do hope you will at least consider his nomination in light of the facts as seen by someone perhaps more familiar with certain aspects noted in Senator Cranston's letter.

With kind personal regards,

Kevin W. Wadsworth

58 Martha Avenue San Francisco, Ca. 94131-2835

Senator **Metzenbaum**. Thank you very much. Our last witness is Mr. Charles Hanger.

STATEMENT OF MR. HANGER

Mr. **Hanger**. My name is Charles E. Hanger. I was admitted to practice before the bar in San Francisco in January 11, 1951, and I have practiced continuously in two different law firms as a trial lawyer in San Francisco since that time. I read over the transcript of the former hearing, and having done that, I called Vaughn Walker last week to indicate that I did not think there was anything I could add to this proceeding. To shorten up my presentation, I want to say that on Monday of last week I changed my mind after reading the local Recorder, the San Francisco legal newspaper. The headline is "Vaughn Walker's Hearings, Book 2." This is an investigative reporter's notion of what this hearing is all about, and I think you gentlemen should be aware of it.

Senator **Metzenbaum**. What is the name of that paper?

Mr. **Hanger**. It is the Recorder. It is the legal paper for San Francisco.

Senator **Metzenbaum**. You might leave it with our staff.

Mr. **Hanger**. I beg your pardon?

Senator **Metzenbaum**. You might leave it with our staff.

Mr. **Hanger**. I will leave it. I merely want to read four excerpts from this article about Vaughn Walker. The issues that have dogged Walker most are his past membership in the Olympic Club, and I will skip the second one, which was a reference to the Gay Games. Then the next reference which was one I found very disturbing, Cranston has said Walker's failure to resign promptly from the club is a sufficient reason to deny him a spot on the court. And immediately prior to that, the Washington, DC, based Alliance for Justice, a judicial watchdog group, identified the Olympic Club membership as the primary reason Walker's nomination should be nixed. And lastly, New York University School of Law Professor Stephen Gillers, who says Walker's past membership in the exclusive Olympic Club is a sufficient ethical transgression to kill the nomination.

I merely want to say to this committee that if Vaughn Walker is to be excluded from the Federal bench because he is a past member of the Olympic Club that I think every member of this committee who so votes should state that that is his reason for doing so. I think the bar at large and the world at large should know that this is a reason for excluding a person otherwise eminently qualified from taking a spot on the federal bench.

I had some additional material along the same line, but in the interest of time I will conclude my presentation and offer this issue of the paper to the Committee.

Senator **Metzenbaum**. Thank you, Mr. Hanger.

[Copy of Recorder newspaper follows:]

Vaughn Walker's Hearing: Book II

Both Sides Gird for Panel Showdown

BY HOWARD MINTZ
RECORDER STAFF WRITER

By the time the Senate Judiciary Committee is done with Pillsbury, Madison & Sutro litigator Vaughn Walker, he will be either San Francisco's own version of Robert Bork, or just another federal judge with a docket.

The committee will conduct a hearing Thursday on Walker's oft-sidetracked nomination to the federal bench, nearly two years after he first was proposed for the slot by Republican U.S. Sen. Pete Wilson.

For Walker, the hearing — his second before the Judiciary Committee — will be an attempt to vindicate himself after being pilloried by perhaps the most unrelenting opposition ever mounted against a nominee to the federal bench in the Northern District of California.

For Walker's opponents, it will be another chance to lynch a nomination that has taken on a Hydra-like quality. Indeed, the nomination has come back again and again — almost as often as it

Walker's Nomination Reaches Panel Again

CONTINUED FROM PAGE 1

has been called "dead in the water" by those trying to bring Walker down.

"What we want is a vote," says Ira Goldman, Wilson's chief counsel. "If Vaughn loses, Vaughn loses. This has gone on too long."

Walker — who enlisted prominent San Francisco defense attorney Ephraim Margolin to testify last year — has attempted to keep his witness list a secret, but a Judiciary Committee source said at least three people will speak on his behalf: Wilson; Senior U.S. District Judge Robert Kelleher, for whom Walker once clerked in Los Angeles; and former San Francisco Mayor Joseph Alioto, who has sent a videotape to the committee because he is currently in trial.

Meanwhile, the opposition is expected to show up in force to contest Walker's confirmation. The lineup of Walker foes includes:

- New York University School of Law professor Stephen Gillers, who says Walker's past membership in the exclusive Olympic Club is a sufficient ethical transgression to kill the nomination.
- San Francisco Supervisor Terrence Hallinan, in a show of the city's resistance to the nomination.
- Berkeley economics professor Julian Malveaux, president of the Black Leadership Forum and an NAACP representative, who will testify on Walker's alleged insensitivity to minorities.
- San Francisco City Attorney Louise Renne, who also will testify on the Olympic Club, specifically her knowledge of the issue as a result of the city's two suits against the club.

Testimony at the hearing may capsulize much of the controversy that has surrounded Walker's nomination the past two years, during which time the Pillsbury partner has become a lightning rod for just about every liberal group that makes politics tick in San Francisco.

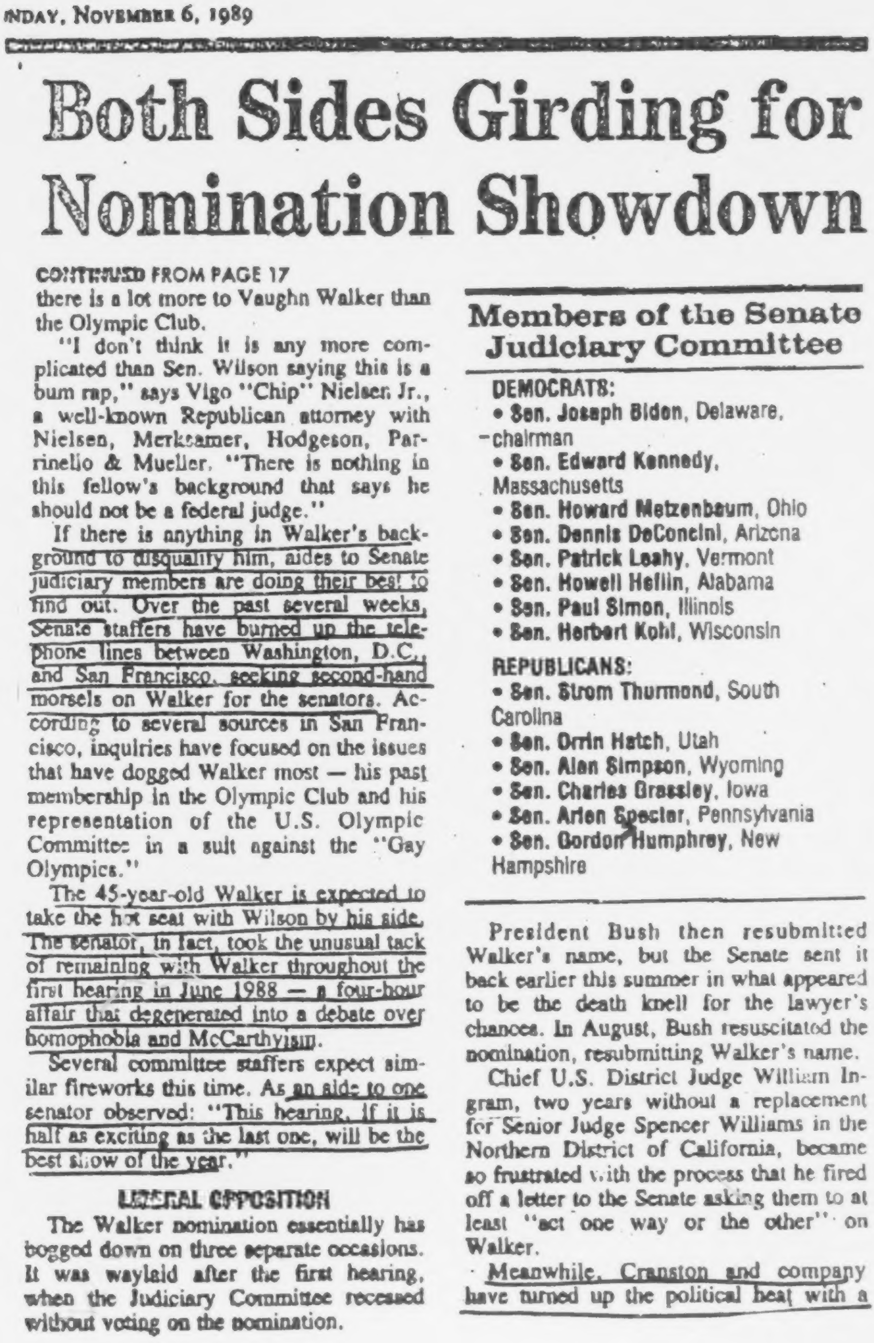
Opponents have called Walker insensitive to gays, women, minorities and the poor. His resignation from the all-male Olympic Club a full year after being nominated — and his explanation for his membership — has fueled criticism from a variety of fronts, most notably Democratic U.S. Sen. Alan Cranston. Many have dismissed his nomination as a political payback by Wilson for being a Republican activist and fund-raiser. In two major cases, opponents have left him tagged as a mean-spirited and vindictive litigator.

But Wilson has stuck by Walker — as have many in what might be called San Francisco's "legal right," the city's Republican lawyers and judges. The reaction to that from some in the Bay Area legal community, however, has been incredulity because of the belief that Wilson simply should have given up on Walker by now.

As one longtime judge — a Democrat — observed: "It's not like anyone has ever suggested he's a superstar. It's not like he's Clarence Darrow."

Even the parliamentary maneuverings of Cranston — the point man in the Walker opposition camp — have failed to derail the nomination. The consensus of Walker supporters and foes is that Wilson is not about to be cowed by pressure from Cranston.

Walker declined to be interviewed for this story. But his supporters, including partners at Pillsbury, say the question marks have more to do with the Byzantine special interest politics of San Francisco than judicial qualifications. And they say



NDAY, NOVEMBER 6, 1989

Both Sides Girding for Nomination Showdown

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there is a lot more to Vaughn Walker than the Olympic Club.

"I don't think it is any more complicated than Sen. Wilson saying this is a bum rap," says Vigo "Chip" Nielsen Jr., a well-known Republican attorney with Nielsen, Merksamer, Hodgeson, Parrinello & Mueller. "There is nothing in this fellow's background that says he should not be a federal judge."

If there is anything in Walker's background to disqualify him, aides to Senate judiciary members are doing their best to find out. Over the past several weeks, Senate staffers have burned up the telephone lines between Washington, D.C., and San Francisco, seeking second-hand morsels on Walker for the senators. According to several sources in San Francisco, inquiries have focused on the issues that have dogged Walker most — his past membership in the Olympic Club and his representation of the U.S. Olympic Committee in a suit against the "Gay Olympics."

The 45-year-old Walker is expected to take the hot seat with Wilson by his side. The senator, in fact, took the unusual tack of remaining with Walker throughout the first hearing in June 1988 — a four-hour affair that degenerated into a debate over homophobia and McCarthyism.

Several committee staffers expect similar fireworks this time. As an aide to one senator observed: "This hearing, if it is half as exciting as the last one, will be the best show of the year."

LIBERAL OPPOSITION

The Walker nomination essentially has bogged down on three separate occasions. It was waylaid after the first hearing, when the Judiciary Committee recessed without voting on the nomination.

President Bush then resubmitted Walker's name, but the Senate sent it back earlier this summer in what appeared to be the death knell for the lawyer's chances. In August, Bush resuscitated the nomination, resubmitting Walker's name.

Chief U.S. District Judge William Ingram, two years without a replacement for Senior Judge Spencer Williams in the Northern District of California, became so frustrated with the process that he fired off a letter to the Senate asking them to at least "act one way or the other" on Walker.

Meanwhile, Cranston and company have turned up the political heat with a

Members of the Senate Judiciary Committee

DEMOCRATS:

- **Sen. Joseph Biden**, Delaware, -chairman
- **Sen. Edward Kennedy**, Massachusetts
- **Sen. Howard Metzenbaum**, Ohio
- **Sen. Dennis DeConcini**, Arizona
- **Sen. Patrick Leahy**, Vermont
- **Sen. Howell Heflin**, Alabama
- **Sen. Paul Simon**, Illinois
- **Sen. Herbert Kohl**, Wisconsin

REPUBLICANS:

- **Sen. Strom Thurmond**, South Carolina
- **Sen. Orrin Hatch**, Utah
- **Sen. Alan Simpson**, Wyoming
- **Sen. Charles Grassley**, Iowa
- **Sen. Arlen Specter**, Pennsylvania
- **Sen. Gordon Humphrey**, New Hampshire

renewed fervor. Twenty-three members of California's Democratic congressional delegation even sent a letter to the Judiciary Committee urging that Walker be rejected for his "insensitivity" to gays and the poor.

In interviews with a broad spectrum of attorneys, activists, judges and political types, nobody finds it surprising that Walker's nomination to a federal judgeship has aroused such opposition. From his legal work to his political activism, Walker has been a virtual poster child for Republican causes.

He has been a Republican fund-raiser for several San Francisco campaign efforts, including for Wilson, Gov. George Deukmejian and Silicon Valley's former U.S. Rep. Ed Zschau — who narrowly lost to Cranston in 1986. His clients have ranged from conservative legislators to the National Rifle Association. And he has spent most of his legal career at Pillsbury, a bastion of Republicanism whose patriarch — John Sutro Sr. — remains influential in Republican circles.

But Walker is not the first federal judicial nominee to be a good Republican. And Wilson's other nominees have gone through the process unscathed. Why then has he kindled such vocal resistance?

The Washington, D.C.-based Alliance for Justice, a judicial watchdog group, identified the Olympic Club membership as the primary reason Walker's nomination should be nixed. Many Walker critics concur, saying it is an example of lack of judgment and insensitivity to minority issues. Cranston has said Walker's failure to resign promptly from the club is sufficient reason to deny him a spot on the bench.

Walker, who resigned from the Olympic Club in February, a little more than a year after his nomination, has maintained that he remained in the club to forge change, and that he saw signs of progress toward abolishing the club's male-only edict.

In his Feb. 15 resignation letter, Walker, citing the club's failure to grant full membership to women, stated: "I will not remain a member of the club in light of the presently bleak prospects for a voluntary change in the bylaws that exclude such membership."

Walker's resignation is viewed as disingenuous by his opponents, who say he resigned for reasons of political expediency. Renne, who has filed two suits against the Olympic Club to change its discriminatory policies, is expected to offer evidence that the club was not making progress during the time Walker claimed it was and that there is no evidence Walker contributed to the effort to alter club policies.

An aide to one key senator on the Judiciary Committee said there is some concern on the committee that Walker "was less than forthright" about the Olympic Club issue at the first hearing.

The private club-membership issue is expected to be of particular interest to Democratic U.S. Sens. Howard Metzenbaum of Ohio, Edward Kennedy of Massachusetts, and Paul Simon of Illinois, who are known to take a dim view of discriminatory clubs. There are eight Democrats and six Republicans on the Judiciary Committee, and if the vote is close, the two Democrats considered swing votes are Arizona Sen. Dennis DeConcini and Alabama Sen. Howell Heflin.

Meanwhile, some say, Walker is being treated unfairly on the Olympic Club question. One highly influential member of the club's movement to open the club to women says that Walker "is getting a bum rap on this issue. He supported us, and I believe the extra six months he stuck around was because he was hoping we would get something done."

Wilson's staffers also note that U.S. Supreme Court Justice Anthony Kennedy was confirmed, despite the fact he was a member of the Olympic Club until the time of his nomination, including while serving on the Ninth Circuit U.S. Court of Appeals.

Walker's Nomination Reaches Panel Again

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Walker opponents say Kennedy openly tried to change the club's practices. Walker supporters note that Kennedy was a federal judge, subject to judicial canons, while Walker is simply a private lawyer.

"Why is Vaughn Walker being singled out for this kind of treatment when Justice Kennedy was whisked through, and properly?" says Goldman, of Wilson's staff. "It suggests they are not applying a logical standard."

CLOUD OVER LITIGATION TACTICS

Walker also is expected to be grilled on his tactics as a litigator, perhaps more so now than ever.

Complaints have been lodged against Walker for his recent handling of an investor fraud case in federal court in San Francisco, with one litigant telling the committee in a letter that it would be "a grave error" to confirm Walker.

Walker was one of the lead plaintiff attorneys for a group of wealthy investors who lost millions of dollars when a fabled Kentucky stud farm — Spendthrift Farms — collapsed in bankruptcy. Walker fared poorly in the case. Most of the defendants were exonerated by court rulings and the two remaining defendants were cleared by a jury last May.

One of those defendants, Garth Guy, wrote the Judiciary Committee to complain that Walker's conduct during the three-year case was "unethical and spiteful," saying the attorney set out to ruin the lives of innocent people. Guy, one of Spendthrift's chief investment consultants, successfully represented himself during the trial because he said he was unable to afford an attorney.

He also filed a complaint with the State Bar. But the State Bar concluded there was no merit to the complaint and closed the file in August, according to a Bar official.

> *'I don't think it is any more complicated than Sen. Wilson saying this is a bum rap. There is nothing in this fellow's background that says he should not be a federal judge.'*
>
> — VIGO "CHIP" NIELSEN JR.,
> NIELSEN, MERKSAMER, HODGSON, PARRINELLO & MUELLER

One opposing counsel in the case, Thomas Bourke, of Los Angeles' Riordan & McKinzie, agrees with Guy.

"It'd be better for the people of San Francisco and the state not to have him as a federal judge," says Bourke, whose client won at the summary judgment stage. "The things I saw in the case indicate a lack of judgment."

Bourke and Guy claim, among other things, that Walker went behind the backs of opposing lawyers to try to make deals with defendants and used strong-arm tactics — including leaks to the press — to pressure the opposition. They also say Walker's overzealousness prompted him to decline hefty settlement offers and press a weak case.

Like Guy, Bourke — a self-described Republican loyalist and Wilson supporter — has written a letter to the Judiciary Committee, telling the senators: "[Walker's] nomination to the federal bench is like a person with a recent history of reckless driving applying for a nonrevocable lifetime license to fly 747 jumbo jets with hundreds of passengers aboard."

Many of the attorneys involved with the Spendthrift case have staunchly defended Walker's conduct in the litigation, including opposing defense attorney Paul Renne, Louise Renne's husband and a partner at Cooley Godward Castro Huddleson & Tatum.

Co-plaintiff attorney John Alioto, of Alioto & Alioto, labels criticism of Walker in the case "just bullshit. He conducted himself in an exemplary way." Joseph Alioto's videotape committee testimony will defend Walker's handling of the case, in addition to defending Pillsbury's record of providing opportunities for minorities in San Francisco.

But Walker's opponents are comparing the Spendthrift case to criticisms leveled in the Gay Olympics litigation. Walker successfully represented the U.S. Olympic Committee in its suit to block the San Francisco Arts and Athletics group from using the term "Gay Olympics." He earned the enmity of San Francisco's gays and liberals not only for how he represented the committee, but also for slapping a lien for attorney fees against the home of gay leader Tom Waddell, who was dying of AIDS.

Civil rights attorney Mary Dunlap, opposing counsel in the Gay Olympics case, has railed against Walker for filing the lien.

"What matters is not who he represented or what substantive issues he takes on," Dunlap says. "The issue is, what did Vaughn Walker engage in in order to win?"

Walker has defended his actions in the case, saying the lien was not vindictive and that Dunlap failed to take action to lift the lien. Walker's supporters also say the attacks are a perversion of the nomination process because lawyers should not be assailed for who they represent.

"The gays are taking on Vaughn Walker because the Olympics case was a chance to promote their cause. It was a high-stakes gamble, and they lost," says Richard Horning, a former Pillsbury partner now with Horning, Janin & Harvey. "Their grievance is with the U.S. Olympic Committee, not Vaughn Walker."

WALKER OUTSIDE THE SPOTLIGHT

What may be lost in the stormy two years of the Walker nomination is what he has done *besides* belong to the Olympic Club and represent the U.S. Olympic Committee.

In records recently submitted to the Judiciary Committee, Walker identified 10 significant cases he has handled with Pillsbury, including the Gay Olympics case. The Spendthrift case was omitted. About six of the cases cited can be said conclusively to have resulted in favorable outcomes for Walker.

The cases listed by Walker demonstrate that he has never shied away from politically charged matters. *The Recorder* interviewed opposing lawyers and co-counsel in eight of the 10 cases, and with the exception of Dunlap in the Gay Olympics case, not one lawyer had a disparaging remark about Walker.

"I'm certainly opposite to Walker in my personal political orientation," says Fred Altshuler, of Altshuler & Berzon. "But as someone who has handled cases with political implications, I don't think it is appropriate to blame the lawyer for the side he represents."

Altshuler, in fact, opposed Walker in a case that couldn't be more political. In 1982, Walker represented taxpayers in a suit to stop outgoing Gov. Edmund G. "Jerry" Brown Jr. from making a batch of judicial appointments before leaving office, a move that would have given Republican Gov. George Deukmejian the chance to fill the spots. The state Supreme Court refused to overturn a lower court ruling, allowing Brown to make the appointments.

Walker also lost another case with statewide ramifications, a 1983 suit filed by the Legislature to stop a ballot initiative that would have reapportioned state and federal districts in California. Walker represented former Republican Assemblyman Don Sebastiani, who placed the referendum on the ballot. Walker's client list includes Sonoma County's Sebastiani Wineries, which Sebastiani says has had a longstanding business relationship with Pillsbury.

Sebastiani defines Walker as politically driven, tough, persuasive and "a damn fine lawyer."

The state Supreme Court eventually canceled the Sebastiani ballot measure, concluding that the Legislature was responsible for the reapportionment and striking down Walker's argument.

"He was handed a difficult case to defend," says the Legislature's lead attorney in the case, Joseph Remcho, a Democratic Party lawyer at Remcho, Johansen & Purcell. "He did a very competent job."

In 1982, Walker successfully represented gun owners in a challenge to a San Francisco ordinance enacted to ban handgun possession. A state appellate court overturned the city law. By his own account, Walker has litigated only four jury trials, including Spendthrift.

The nominee's resume also includes a law degree from Stanford University Law School; a 1971 clerkship with Judge Kelleher, of the Central District of California; and 17 years at Pillsbury, the last 12 as a partner specializing in securities, antitrust and business law. Kelleher could not be reached for comment.

Lawyers familiar with Walker say his background is sound, but not spectacular. Some observers say that Wilson has better candidates to choose from within San Francisco's Republican legal community. But no one views the Walker nomination without the politics attached.

"Walker is a guy who came through Wilson's system," says one federal judge. "It's one of those things that when you are up for consideration, if they want to look for something, they will find something. Who can guess what the committee will do?"

Senator METZENBAUM. I might say to you that I think you ought to look at the ABA position on that subject because you were talking about how the committee ought to act. You ought to take a look at what their position is on it, and I would guess you are a member of the ABA.

Mr. HANGER. I am a member of the ABA. Last Saturday in New Orleans I was elected the president-elect of the American College of Trial Lawyers. I will not describe the organization to you other than to say that one of our active members is Senator Heflin, and he can perhaps describe it also.

Senator METZENBAUM. This Senator has no further questions. Senator Thurmond does have some questions. I must leave. Senator Thurmond will make his inquiry and then adjourn the meeting, and I thank him.

Senator THURMOND. Can you stay 2 minutes and I will be through.

Senator METZENBAUM. All right. I will stay 2 minutes.

Senator THURMOND. I have a question I would like to ask each member of the committee. And we will start here with Judge Gyemant. I believe you are a Superior Court judge in California?

Ms. GYEMANT. Yes, that is correct.

Senator THURMOND. Were you appointed by the governor or elected by the legislature or how were you selected?

Ms. GYEMANT. I was appointed by the governor in August of 1986.

Senator THURMOND. Did you have to be confirmed by the senate out there?

Ms. GYEMANT. No, not at all. But I did go through a judicial evaluations committee.

Senator THURMOND. I see.

Ms. GYEMANT. Before my name was submitted to the Governor.

Senator THURMOND. All right. And you are a municipal judge, I believe, Judge Wick.

Ms. WICK. That is correct, Senator.

Senator THURMOND. This is the question I want to ask each one of you. Have you ever found Mr. Walker other than fair, and do you feel that he would be unbiased and unprejudiced in his work as a judge?

Ms. GYEMANT. I have never found him to be other than fair, and I do believe that he would be unbiased and unprejudiced if he were to be a judge.

Ms. WICK. Senator, after 15 years I believe that I know Mr. Walker, and I can tell you in all truthfulness that I do not believe that he could be unfair sitting on the bench, and that he is a very fair and compassionate man.

Senator THURMOND. Mr. Wadsworth?

Mr. WADSWORTH. Yes, sir. I could not add anything to what they have stated. I have known him for 10 years. He has been of great help to me and what has been great about him, you do not have to go screaming to everyone in the world about the help that you give people. Some of the best work in the world is done quietly and behind the scenes. And often that is the most important work. And he has done a hell of a lot for me and people in my community, and does not need to go off and get all sorts of press to do it. And I admire a person that will always be there when you need him.

Senator **Thurmond**. Mr. Hanger.

Mr. **Hanger**. I have nothing but the greatest respect for Mr. Walker and in answer to your question I would like to read one sentence from this article on the theory that you may not have an opportunity to review it. The article publishes ten cases that Vaughn Walker tried over the last few years. The Recorder says: the Recorder interviewed opposing lawyers and co-counsel in eight of the ten cases—I was one of those interviewed for the article—and with the exception of Dunlap in the Gay Games case not one lawyer had a disparaging remark about Walker. Thank you.

Senator **Thurmond**. My second question is do you believe that Mr. Walker possesses the intelligence, the integrity, and the judicial temperament to be a judge for the U.S. district court?

Ms. **Gyemant**. I absolutely do.

Ms. **Wick**. And I state unhesitatingly yes.

Mr. **Wadsworth**. Yes, sir.

Senator **Thurmond**. Speak out for the record.

Mr. **Wadsworth**. Yes, sir.

Mr. **Hanger**. I think his pedigree is beyond reproach. Stanford University, clerking, and 17 years at the bar in San Francisco trying difficult cases and a judicial temperament which I think will be outstanding. Thank you.

Senator **Thurmond**. I wish to thank the members of the panel. That is all the questions I have, Mr. Chairman. Thank you.

Senator **Metzenbaum**. Thank you. The hearing stands adjourned. Thank you all very much.

[Whereupon, at 12:07 p.m., the committee adjourned.]

VAUGHN R. WALKER

Birth:	February 27, 1944	Watseka, Illinois
Legal Residence:	California	
Marital Status:	Single	
Education:	1962 - 1966	University of Michigan A.B. degree
	1966 - 1967	University of California
	1967 - 1968	University of Chicago Law School
	1968 - 1970	Stanford University Law School J.D. degree
Bar:	1972	California
Experience:	1970	Law Clerk, Appellate Department Los Angeles County Superior Court
	1971 - 1972	Law Clerk to Hon. Robert J. Kelleher, U.S. District Court, California Central
	1972 - present	Pillsbury, Madison & Sutro Associate (1972-1977) Partner (1978-present)
Office:	225 Bush Street Post Office Box 7880 San Francisco, California 94120 415 983-1500 415 983-1000	
Home:	40 Calhoun Terrace San Francisco, California 94133	

To be United States District Judge for the Northern District of California

September 18, 1989

The Honorable Joseph R. Biden, Jr.
Chairman
U.S. Senate Judiciary Committee
Washington, D.C. 20510

Dear Senator Biden:

On behalf of the 275,000 members of the People For the American Way Action Fund we write to express our opposition to the nomination of Vaughn Walker to the United States District Court for the Northern District of California. Our opposition is based upon the approach Mr. Walker has taken to membership in San Francisco's Olympic Club, a private all-male club.

Although the Senate returned this nomination to the White House prior to its August recess, we understand that President Bush has just renominated Mr. Walker for this seat. Further, as you are aware, President Bush has resubmitted this nomination despite the opposition of Senator Alan Cranston.

In the five years since the American Bar Association formally adopted the position that a judge should not belong to an organization that discriminates on the basis of race, religion, or gender, the Senate Judiciary Committee has grappled repeatedly with the issue as it considered nominees for judicial office. The issue has received particular attention in the last two years, since the Committee considered the Supreme Court nomination of Anthony Kennedy and examined Justice Kennedy closely about his resignation from the same all-male Club to which Mr. Walker belonged.

The Committee faced a particularly difficult situation when Shannon Mason was nominated to the District Court for the Eastern District of Virginia. Mr. Mason had been a member of a discriminatory private club for 17 years and had done nothing in that period to change the club's membership practices or his own status. It was not until two weeks before the Committee's hearing on his nomination that he resigned from the club. After the hearing, the Committee chose not to pass on Mr. Mason's nomination.

The situation presented this year by the nomination of Vaughn Walker is even more egregious. The restrictions in membership of the Olympic Club have been controversial in the San Francisco community for over 20 years. Justice Kennedy's 1987 resignation from the club came after club members voted down a plan that would have allowed the admission of women. After the Olympic Club rejected a request by the City of San Francisco to voluntarily end the club's discriminatory practices, the city filed suit against the club in early 1988 for violations of local and state civil rights laws.

For over a year after Mr. Walker was first nominated to the District Court by President Reagan, he refused all suggestions that he resign his membership. In June of 1988, Mr. Walker appeared before the Judiciary Committee and told the Committee that the Olympic Club was a club without a history or a future of discrimination. He also, in effect, offered to trade his membership in the club in exchange for confirmation to the District Court. Only in 1989, after his original nomination had died in the 100th Congress and the question of renomination was presented to President Bush, did Mr. Walker finally end his membership.

We have enclosed a chart, prepared through our Judicial Nominations Network, comparing Mr. Walker's testimony about the Olympic Club with the facts of the club's history and practices. As the chart reflects, there are discrepencies between Mr. Walker's statements and actual events. Moreover, Mr. Walker's statements and his approach to the issue of club membership reflect at best an insensitivity to the realities of discrimination. They also reflect an inability to deal fairly with a factual situation of the very kind that Mr. Walker could face as a United States District Judge.

We believe strongly that every judge must demonstrate a commitment to the principle of equal justice. We also believe that continued membership in a club that discriminates is incompatible with that principle. The time has come to send a clear signal that there is no place on the federal bench for an individual who has, for years, maintained membership in a discriminatory club and taken no meaningful steps to change the club's practices, other than to resign on the eve of nomination.

We therefore urge you to send that signal and to reject the nomination of Vaughn Walker.

Sincerely,

John H. Buchanan, Jr. Chairman	Melanne Verveer Executive Vice President

VAUGHN WALKER
ON THE OLYMPIC CLUB

Walker's Statement	The Facts
1. I believe the Olympic Club is a very good example of an organization that is in the process of change, has successfully completed substantial change, and has promise of future change." (Senate Judiciary Committee Hearing Transcript, June 13, 1988, p. 41)	1. The Olympic Club is a club that did not admit a single black person to membership until 1988, when it was sued for discrimination by the City of San Francisco. The Club continues to deny voting membership to women. It has even gone so far as to change its manner of conducting business in order to avoid a law that would require the admission of women, and to spend hundreds of thousands of dollars contesting a lawsuit that would end its exclusion of women.
2. "In the past, there ha[s] been no formal exclusion of blacks or, indeed, of any other racial minorities" from the Olympic Club. (Hearing Transcript, June 13, 1988, p. 38)	2. From the founding of the Olympic Club, its bylaws restricted membership to "only white male citizens of the United States of good moral character, integrity, and reputation." This policy of racial segregation was challenged in 1967 when community groups and others brought pressure to bear against the club, and was not dropped until a year later. (Letter from George Riley, Assistant City Attorney to the Senate Judiciary Committee, August 8, 1988)
3. "I think the exclusion of minorities from the Olympic Club...is a wrong that has been righted." (Hearing Transcript, June 13, 1988, p. 43)	3. The Olympic Club did not admit any blacks to full membership until the spring of 1988 when, in response to a civil rights suit by the City of San Francisco, the club admitted two blacks to its voting membership of over 4,700. The club has since admitted 2-3 more blacks. (Letter from George Riley, to the Senate Judiciary Committee, August 8, 1988)

6. "[T]he Club will soon take significant steps away from the unequal membership status of women." (Letter from Vaughn Walker to the Senate Judiciary Committee, Sept. 22 1988)	6. Since the spring of 1988, the Olympic Club has undertaken a vigorous defense of a suit brought by the City Attorney of San Francisco that seeks the inclusion of women in the voting membership of the club. Throughout the course of the litigation, the club has filed numerous pleadings and motions. To date, the club has reportedly incurred hundreds of thousands of dollars in attorneys' fees to contest this suit. (Letters from George Riley to the Senate Judiciary Committee, August 8, 1988, March 2, 1989)
7. "There was a referendum in September or October of [1987] on membership practices...the majority membership, by a very close vote, decided to retain holding voting membership exclusively to men." (Hearing Transcript, June 13, 1988, p. 38)	7. The referendum in the fall of 1987 to allow the admission of women to voting membership in the Olympic Club was defeated by a vote of 1,540 to 2,082. (Letter from Vaughn Walker to the Senate Judiciary Committee, Sept. 22, 1988, p. 1) The defeat of this referendum prompted Justice Anthony Kennedy to resign from the Olympic Club. (Hearing Transcript on Kennedy Nomination, Dec. 14, 1987, p. 148) Since that time, the club membership has voted down a second initiative to permit voting membership to women. (Letter from George Riley to the Senate Judiciary Committee, March 2, 1989)
8. "[T]here have been subsequent negotiations with another athletic club, a women's athletic club, and much discussion in the [Olympic] Club as to how to accommodate both men and women on a full participating basis." (Hearing Transcript, June 13, 1988, p. 38)	8. Other than this statement by Mr. Walker and his reiteration on September 22, 1988, there has never been any evidence on the public record that the Olympic Club is negotiating a merger with a women's athletic club. (Letter from George Riley to the Senate Judiciary Committee, August 8, 1988)

9. "I have been concerned about this issue [the Club's exclusion of women] for a long time and, as the record before the committee indicates, attempting to effect these changes." (Hearing Transcript, June 13, 1988, p. 44)	9. The public record does not reflect that Walker has taken any significant steps to advance the inclusion of women as full voting members of the Olympic Club. He did have informal conversations with some club members about the inclusion of blacks, and he did vote in favor of the 1987 club initiative that would have admitted women to full membership. However, he did not attend the club board meeting at which the issue of admitting women was discussed. He did not attend the general membership meeting on the subject to urge others to vote in favor of the initiative. He did not write a letter to the club's legal committee advocating change, as Justice Kennedy did. Only after his 1988 confirmation hearing, at which he was questioned extensively about his membership in the Olympic Club, did he even write a letter to the club newspaper urging the admission of women. (See letter from Vaughn Walker to Senate Judiciary Committee, Sept. 22, 1988, pp. 1-6) There has been no indication since that time that Walker has sought to advance the second initiative on the admission of women or urged the club to settle the discrimination suit brought by the City of San Francisco. (Letter from George Riley to the Senate Judiciary Committee, March 2, 1989)

People For The American Way
ACTION FUND

Statement by John H. Buchanan Jr.
People For the American Way Action Fund

On Banning Membership in Discriminatory Clubs By Federal Judicial Nominees

On several occasions the Senate Judiciary Committee has grappled with the issue of a judicial nominee's membership in a discriminatory club. The debate surrounding the Walker nomination demonstrates the need to resolve this issue. People For the American Way Action Fund believes strongly that every judicial nominee must demonstrate a commitment to the principle of equal justice. We also believe that continued membership in a club that discriminates is incompatible with that principle. The time has come to send a clear signal that there is no place on the federal bench for individuals who have for years maintained membership in a discriminatory club, taken no meaningful steps to change the club's practices, and resisted resigning from such a Club even when being considered for a judgeship.

Over the past decade, a consensus has emerged that it is unacceptable for members of the federal judiciary, which is charged with enforcing our constitutional and statutory guarantees of equality and justice, to be members of clubs that discriminate:

* In 1979, the Senate Judiciary Committee began including a question about club membership in the questionnaire for judicial nominees.

* In the early 1980's, the American Bar Association Code of Judicial Conduct was amended to provide specifically that "[i]t is inappropriate for a judge to hold membership in any organization that practices invidious discrimination on the basis of race, sex, religion or national origin." The ABA Code recognizes that "[m]embership of a judge in an organization that practices invidious discrimination may give rise to perceptions by minorities, women, and others, that the judge's impartiality is impaired."

* Forty-five states have adopted the ABA Code of Judicial Conduct, and the Judicial Conference of the United States has adopted the ABA Code's standard on club membership.

* In 1988, the Supreme Court unanimously upheld a municipal ordinance banning discriminatory clubs and commercial organizations.

- In 1987, before he was nominated to the Supreme Court, Justice Kennedy resigned from several discriminatory clubs after they refused to end their discriminatory policies, commenting that "real harm can result from membership exclusion regardless of its purported justification."

People For the American Way Action Fund calls upon the participants in the judicial nomination process to establish a policy that makes clear that membership in a discriminatory club is not acceptable for a nominee to the federal judiciary. Specifically, we urge that:

- the Administration establish a clear policy that it will not nominate anyone for a federal judgeship who, at the time of nomination, is a member of a club or other commercial organization that discriminates on the basis of race, sex, religion or national origin.

- the Senate Judiciary Committee similarly make clear that it will not recommend confirmation of any judicial nominee who does not meet this standard.

- the ABA mid-year convention adopt the resolution approved by an ABA committee that would make mandatory the principle that judges not belong to any discriminatory club or organization.

The existence of discriminatory clubs is at odds with the American tradition of equal justice. The President and Senate Judiciary Committee must establish a clear policy that judicial nominees cannot belong to clubs and other commercial organizations that discriminate against minorities or women. A full commitment to civil rights and equal justice demands no less.

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California State Senate

STATE SENATOR
QUENTIN L. KOPP
EIGHTH SENATORIAL DISTRICT
REPRESENTING SAN FRANCISCO AND SAN MATEO COUNTIES

COMMITTEES
TRANSPORTATION, CHAIRMAN
HOUSING & URBAN AFFAIRS
LOCAL GOVERNMENT
REVENUE & TAXATION
TOXICS & PUBLIC SAFETY
MANAGEMENT

November 4, 1989

Hon. Joseph Biden, Chairman
Committee on the Judiciary
United States Senate
Senate Office Building
Washington, DC 20510

Vaughn R. Walker
United States District Judge

Dear Chairman and Members:

I write to recommend approval of the nomination of Vaughn R. Walker, Esq., for the United States District Court of the Northern District of California.

I have known Vaughn for over a decade, and he is a superior lawyer in every respect. He is industrious, he is courteous, he is temperate, he is thorough, he is respectful and he is scholarly.

Apparently, opposition has arisen from the fact that he represented clients in cases in which they (meaning the complainants against Vaughn Walker's nomination) had (or have) an adverse interest. (For example, the City Attorney of the City and County of San Francisco, who opposes his nomination, has filed a suit against an athletic club of which her husband and Mr. Walker are former members). That's a regrettable reason for arguing against approval of Vaughn's nomination as a United States District Judge. Can you imagine the ramifications to any lawyer whoever aspired to the Federal Bench? I can. Public figures, like you and me, often refer to the "chilling affect" of laws which affect adversely our American rights under the First Amendment to the United States Constitution. How about the chilling effect upon any lawyer who accepts representation of a client and thereby runs the risk of opposition at a later time in his life to an appointment to the United States District Court or

United States Court of Appeals or United States Supreme Court? That's an abasing spectacle to contemplate.

In any event, I recommend Vaughn Walker without reservation for appointment to the United States District Court. I might add that I am a 1952 graduate of Harvard Law School, a veteran of two years' service with the United States Air Force, most of which was in the Judge Advocate's Office, a former assistant counsel to the Waterfront Commission to New York Harbor, and admittee to practice before all the courts of the State of California, the State of New York, the District of Columbia, the United States District Court of the Northern District of California, the United States District Court for the Eastern District of California, the United States Court of Appeals for the Ninth Circuit, the United States Supreme Court and the United States Customs Court. I am past president of the Conference of Barristers of the State Bar of California, past president of the Barristers Club of San Francisco, past director of the Bar Association of San Francisco, the Lawyers Club of San Francisco and the Junior Bar Conference of the American Bar Association, a past member of the House of Delegates of the ABA, a past director of the Legal Aid Society of San Francisco and a past member of the California Conference of State Bar Delegates. I have been a practicing trial lawyer in the City and County of San Francisco since 1955 and prior to election to the California State Senate in 1986, I served for nearly 15 years as a member of the Board of Supervisors of the City and County of San Francisco.

Most relevantly, I speak from experience about Mr. Walker's extraordinary credentials for appointment to the United States District Court. He is extremely well qualified.

Sincerely yours,

Quentin L. Kopp

QUENTIN L. KOPP

QLK:jr

THE ASSOCIATION OF THE BAR
OF THE CITY OF NEW YORK
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November 10, 1989

Hon. Joseph R. Biden, Jr.
United States Senate
489 Russell Senate Office Building
Washington, D.C. 20510

Dear Senator Biden:

I am pleased to inform you that the Committee on the Judiciary of the Association of the Bar of the City of New York has found John M. Walker, Jr. APPROVED for appointment as United States Circuit Judge for the Second Circuit Court of Appeals.

Very truly yours,

Robert L Haig

RLH:gs

Alliance for Justice

A National Association of Organizations Working for Equal Justice

600 New Jersey Avenue, N.W. ■ Washington, D.C. 20001 ■ 202/662-9548

NAN ARON
Executive Director

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Women's Law Project

Women's Legal Defense Fund

November 21, 1989

The Honorable Joseph Biden
Chairman
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Chairman Biden:

Enclosed are materials prepared for and distributed to the Committee regarding the nomination of Vaughn Walker to be a federal district court judge in the Northern District of California. We request that these documents be placed in the official hearing record on the nomination.

Sincerely,

George Kassouf

GEORGE KASSOUF
Director
Judicial Selection Project

Alliance for Justice
A National Association of Organizations Working for Equal Justice
Judicial Selection Project
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Project Director
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International Union of Electronic Workers, AFL-CIO
CLAUDIA WITHERS
Women's Legal Defense Fund

April 17, 1989

EXECUTIVE SUMMARY OF
VAUGHN WALKER MEMORANDUM

The nomination of Vaughn Walker to a federal judgeship in San Francisco has aroused considerable opposition, primarily because of his longtime membership in a private club with an extensive history of discriminating against blacks and women.

California Senator Alan Cranston recently announced his opposition in a letter to the Senate Judiciary Committee, stating:

> "Mr. Walker's basic perspective on this issue and his defense of the club's position cannot, in my view, be rectified by a belated resignation, calculated to win confirmation rather than prompted by recognition of the impropriety of maintaining such a membership."

Walker resigned February 15, 1989, one week before his nomination, but inexplicably he refrained from disclosing that fact until after Senator Cranston's announcement.

The Olympic Club is a large social club in San Francisco with about 4,700 male members. Throughout its 128-year history, it refused to admit blacks until the City of San Francisco filed a civil rights lawsuit in 1987. In the spring of 1988, the Club began expediting the membership applications of blacks and by September 1988, it had admitted five black men.

However, the Club's bylaws still discriminate against women. Only wives and unmarried daughters of male members may join the Club for a limited membership, and as members they cannot vote, hold office or use certain facilities. In October 1987, the Club membership by referendum rejected a proposal to lift these restrictions.

The Club is vigorously fighting the City's lawsuit, which now has focused on the exclusion of

Participating Alliance Members: Business and Professional People for the Public Interest, Center for Law and Social Policy, Center for Law in the Public Interest, Center for Public Representation, Center for Science in the Public Interest, Education Law Center, Employment Law Center, Equal Rights Advocates, Food Research and Action Center, Institute for Public Representation, Juvenile Law Center of Philadelphia, Mental Health Law Project, National Education Association, NOW Legal Defense and Education Fund, National Women's Law Center, Native American Rights Fund, New York Lawyers for the Public Interest, Public Advocates, Inc., Sierra Club Legal Defense Fund, Women's Law Project, Women's Legal Defense Fund

women. The Club is also attempting to circumvent the civil rights laws and recent U.S. Supreme Court holdings by "privatizing" internal business transactions -- for example, by refusing to accept payments by non-members.

Walker was a member of the Olympic Club for almost 15 years, and he knew that he had been under serious consideration for the judgeship since 1986. Walker's own efforts to end discrimination within the Club have been insubstantial and mostly of recent vintage. In testimony before Congress, Walker repeatedly defended his membership, stating that the Club was making "substantial" progress in the recruitment of blacks. Walker attempted to minimize the invidiousness of the Club's gender discrimination by noting that an all-female athletic club was located one block from the Club's downtown facilities, thus invoking and endorsing a "separate but equal" comparison.

For more than a year after his first formal nomination, Walker refused to resign from the Club, and then did so only a week before his second nomination. Other issues involving Walker remain unresolved, such as his questionable litigation tactics in the "Gay Olympics" case and his meager pro bono record.

In reviewing the qualifications of nominees to the federal bench, the Committee examines each nominee's record for evidence of a demonstrated commitment to equal justice. One indication of such a commitment is whether the nominee is a member of a club that discriminates on the basis of race, sex, religion or national origin -- bases that the U.S. Supreme Court has long considered arbitrary and denigrating. In 1979, the Committee, under the leadership of Senators Edward Kennedy and Strom Thurmond, firmly established a policy that a nominee for a federal judgeship should not belong to a social club that engages in invidious discrimination. Legal commentary uniformly supports this position, and the Committee has followed this policy in reviewing nominations over the last decade.

Vaughn Walker chose to maintain his membership in a club that until last year discriminated against blacks and continues to do so against women. He testified under oath about the Club's so-called progress even as the Club was aggressively fighting the City to maintain its bar against women. Walker's actions concerning his club membership have consistently reflected an insensitivity to the harm resulting from racial and gender exclusion, especially in light of the well-known and particularly apt precedent established by former Olympic Club member, Justice Anthony Kennedy. Furthermore, Walker's recent resignation suggests not a growing awareness of discrimination issues, but a shrewd attempt to defuse the issue. In short, Walker clearly fails to meet the standards established by this Committee for judicial nominees.

Alliance for Justice
A National Association of Organizations Working for Equal Justice
Judicial Selection Project
600 New Jersey Avenue, N.W. ● Washington, D.C. 20001 ● 202/662-9834

April 17, 1989

GEORGE KASSOUF
Project Director
NAN ARON
Chair

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ELLYN WEISS, ESQ
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International Union of Electronic Workers, AFL-CIO
CLAUDIA WITHERS
Women's Legal Defense Fund

MEMORANDUM ON VAUGHN WALKER'S MEMBERSHIP IN THE OLYMPIC CLUB

The nomination of Vaughn Walker to a seat on the federal district court in San Francisco presents the Senate Judiciary Committee with the issue of whether his membership in a discriminatory club is a disqualifying factor. This memorandum considers the issue in light of facts pertaining to Walker's involvement in the Olympic Club, his longtime refusal to resign, the ABA's ethical guidelines, relevant precedents and commentary by legal scholars. Based on a review of the record, the Alliance for Justice's Judicial Selection Project concludes that Walker lacks a fundamental understanding of and sensitivity to racial and gender discriminatory practices, which are critical to the role of a federal judge.

I. BACKGROUND

Walker's Nomination. Vaughn Walker knew that he was under serious consideration for a federal judgeship almost two years prior to his first formal nomination. (Questionnaire of Vaughn Walker, January 12, 1988, at 34). His nomination to the Northern District of California in December 1987 aroused considerable opposition in the San Francisco area. The Board of Supervisors of San Francisco -- the governing body of the city and county -- passed a resolution opposing his confirmation, stating that "his seeming lack of integrity and his lack of compassion do not qualify him for the duties of a Federal judge." Local civil rights, women's bar and gay advocacy groups also expressed strong disapproval.

The Committee held Walker's hearing on June 13, 1988, during which several controversial issues were explored: Walker's litigation tactics in International Olympic Committee v. San Francisco Arts & Athletics (N.D. Cal. 1982), aff'd, 707 F.2d 517 (9th Cir. 1983), aff'd, 107 S.Ct 2971 (1987); his thin record of pro bono work; and his membership in the Olympic Club. In September 1988, the Committee sent Walker follow-up questions about the Olympic Club and his membership. Walker responded to the questions on September 22, 1988. The Committee took no further action, and his nomination expired at the end of the 100th Congress. President Bush renominated Walker on February 22, 1989.

Participating Alliance Members: Business and Professional People for the Public Interest, Center for Law and Social Policy, Center for Law in the Public Interest, Center for Public Representation, Center for Science in the Public Interest, Education Law Center, Employment Law Center, Equal Rights Advocates, Food Research and Action Center, Institute for Public Representation, Juvenile Law Center of Philadelphia, Mental Health Law Project, National Education Association, NOW Legal Defense and Education Fund, National Women's Law Center, Native American Rights Fund, New York Lawyers for the Public Interest, Public Advocates, Inc., Sierra Club Legal Defense Fund, Women's Law Project, Women's Legal Defense Fund

Although Walker's conduct in the International Olympic case remains relevant,[1] his membership in the Olympic Club has emerged as the critical issue in his nomination. Senator Alan Cranston recently submitted a letter to the Judiciary Committee opposing the nomination, primarily because of Walker's longtime membership in the Club. Senator Cranston added:

> "Mr. Walker's basic perspective on this issue and his defense of the club's position cannot, in my view, be rectified by a belated resignation, calculated to win prompt confirmation rather than prompted by recognition of the impropriety of maintaining such a membership."

(Letter from Senator Alan Cranston to Senator Joseph R. Biden, Jr., April 4, 1989, at 5.) Walker did resign on February 15, 1989, one week before his renomination, but inexplicably he refrained from disclosing that fact until after Senator Cranston's annoucement.

The Olympic Club and the City's Lawsuit. In existence for over 128 years, the Olympic Club is a large, social and athletic club in the San Francisco area, with about 4,700 active members. It owns and operates an athletic and dining facility downtown and a country club, with a world-famous gold course, in Lakeside, San Francisco. The Club is also a major business enterprise in the San Franscisco area: it issued public bonds to finance its capital expansion; it received more than $3 million dollars from the prestigious U.S. Open golf tournament which it hosted in 1987 and to which 25,000 people attended; and it leases the land on which The Portman hotel stands. During its 1986 fiscal year, the Club received approximately $12 million in revenue -- 60% of which resulted from its commercial activities. (Parker, "Membership Has Its Privileges," California Lawyer, June 1988, at 115; Plaintiff's Memorandum of Points and Authorities, Motion for Summary Judgement, City and County of San Francisco v. The Olympic Club, No. 883-604, June 1, 1988.)

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[1] Walker represented the U.S. Olympic Committee at the district and circuit court level in its successful attempt to prohibit the San Francisco Arts & Athletics from using the word "Olympics" in connection with the SFAA-sponsored Gay Games. After prevailing at the trial level, Walker secured an attorney fees award by attaching a lien to the home and property of SFAA founder, Thomas Waddell. The appeals court, however, vacated the fee award. Despite that decision and repeated requests from Waddell's attorney, Walker refused to remove the lien, claiming instead that the appellate decision had automatically "extinguished" it. Walker knew that Waddell, a public figure in San Francisco, was dying of AIDS at the time. The lien was eventually removed four days after Waddell's death, when his probate attorney obtained Walker's signature on several release forms.

Although the appellate decision did extinguish the legal effect of the lien, California law clearly required Walker, as the judgment creditor, to remove the lien from the property records. (Letter from Professor Pierre R. Loiseaux, University of California-Davis School of Law, to the Alliance for Justice, July 7, 1988, Committee file.)

Since its origin, the bylaws of the Club restricted membership to "only white male citizens of the United States of good, moral character, integrity and reputation." The racial ban was quietly dropped in 1968, but for twenty years the Club still refused to admit black members. The Club continues to have an express prohibition against women members. Under the bylaw section "Derivative Privileges of Women," wives and unmarried daughters of male members are permitted certain golf and tennis privileges and may participate in a "Women's Social Section," but women are officially barred from full, active membership. They cannot vote, hold office or join the Club in their own right. Today, approximately 900 women are granted such privileges. (Plaintiff's Memorandum of Points and Authorities.)

In June 1987, the City Attorney of San Francisco warned the Club that its discrimination against blacks and women violated state and municipal anti-discrimination laws. Consequently, the Club's board considered proposals extending voting rights to women and in July submitted the bylaw proposals to the membership for approval. Justice Anthony Kennedy, then a 9th Circuit judge and a member of the Olympic Club, wrote a letter to the Club's legal committee, urging adoption of the changes. On October 7, 1987, however, the membership rejected the proposals. Kennedy then resigned, stating that his membership had become "quite untenable".

In November 1987, the City of San Francisco filed an action against the Club, charging it with discrimination against blacks and women. Specifically, the city alleged violations both of the state's Unruh Civil Rights Act,2/ prohibiting discrimination on the basis of race and sex in all business establishments, and of the municipal ordinance prohibiting discrimination by clubs which are "not distinctly private". The city also alleged a breach of contract claim because it leases 17 acres to the Club for its golf course, and the lease incorporates the state and municipal laws.

The Club is vigorously fighting the lawsuit. It filed an amended cross-complaint against the city, alleging malicious breach of the lease and violation of the good faith and fair dealing covenants. The trial court dismissed the amended cross-complaint. The Club also attempted to depose the City Attorney, which the city viewed as harrassment and a violation of the attorney-client

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2/ The U.S. Supreme Court upheld application of the Unruh Act to California Rotary Clubs in Board of Directors of Rotary International v. Rotary Club, 107 S.Ct. 1940, 1947 (1987) (the law "serves the State's compelling interest in eliminating discrimination against women").

privilege. The court granted a protective order preventing the deposition.

To further avoid enforcement of the San Francisco ordinance, on June 30, 1988, the Club also announced changes in its methods of conducting business in order to "privatize" its transactions.3/ The Club would no longer accept payments by non-members, or cash or credit card transactions by members; dues and charges would have to be paid by personal check. The Club president stated:

> "The Olympic Club regrets that after over a century of undisturbed, quiet existence, minding its own private affairs, it finds itself forced to defend the fundamental rights of its members against the forced arm of political oppression."

(Press Release, The Olympic Club, June 30, 1988).

The Club also initiated an "accelerated" membership policy for black applicants, by advancing their names on the waiting list. As of September 1988, the Club had admitted approximately five black men. Recently, the trial court denied cross-motions for summary judgment, and the case is back in the discovery phase.

Walker's Club-Related Activities. Walker's questionnaire, testimony and submissions before the Committee demonstrate that not only has he taken little action to change the Club's discriminatory policies since becoming a member in 1974, but also he has defended his membership by exaggerating the Club's so-called progress. Although "not personally active in the Club's governance," he knows people in such positions and has expressed to them his "distaste for the Club's slowness in accepting minority members." (Quest. at 32-33.) He noted that "[s]everal years ago, I discussed with another member the possibility of sponsoring a black acquaintance," but Walker took no further action because the potential candidate moved from the San Francisco area. (Quest. at 32.) Walker provided no other examples of his recruitment of minorities.

3/ Just ten days prior to this announcement, the U.S. Supreme Court issued a decision upholding a New York City law that prohibited discrimination by private clubs with over 400 members and providing regular service to businesses and to non-members, thus giving such clubs a "public character". New York State Club Association, Inc. v. City of New York, 108 S.Ct. 2225 (1988). This was the third time in recent years that the Court upheld, in the face of a constitutional freedom-of-association challenge, a state or local law barring discrimination by clubs. See also Roberts v. United States Jaycees, 104 S.Ct. 3244 (1984) (Minnesota state law prohibiting gender discrimination); Board of Directors of Rotary International v. Rotary Club, 107 S.Ct. 1940 (1987) (California state law banning gender discrimination).

Walker told the Committee that he does not believe the Club now practices invidious discrimination because of the accelerated membership policy for black applicants. In September 1988, Walker reported that two or three more blacks had joined the Club. He, however, did not answer the Committee's follow-up question about whether he had a role in the adoption of the "acceleration" policy and whether he has attempted to recruit potential black members under the new policy.

Regarding the Club's policy towards women, Walker testified that he had voted in the October 1987 referendum to extend voting rights to women members and that he had encouraged others to do so as well. Walker, however, distinguished the Club's gender discrimination from its history of racial discrimination by noting that an all-women's athletic club is located within a block of the Olympic Club. He also told the Committee that the Club president has talked to the head of a women's club about the possibility of merging. Walker stated, however, that he was not involved in the discussions and did not know what took place. The City Attorney's office stated that it had "no information to confirm" Walker's statement. (Letter from George Riley, Special Assistant to the City Attorney, August 8, 1988, at 2.) Moreover, Walker failed to answer the Committee's critical follow-up question on the merger issue: "How would these discussions, if successfully concluded, lead to a change in the _voting_ membership status for women in the Olympic Club?" (Letter from Vaughn Walker to Steve Metalitz, September 22, 1989, at 2, emphasis added.)

Walker also submitted to the Committee a letter he wrote to the editor of the Club's magazine, expressing the view that women members should be allowed to vote. He did not state whether the letter was published. It is important to note that the letter is dated July 18, 1988 -- one month _after_ his hearing. (Walker letter at 6.)

In his testimony, Walker exaggerated the Club privileges granted to women. Walker told the Committee: "With respect to the public facilities at the Olympic Club, women have been admitted to that on an equal basis with men for many years...[A]dmission to the full range of athletic facilities in the downtown club...is the only place where it makes a difference." (Transcript of Hearing, Nomination of Vaughn Walker, June 13, 1988 at 47.) Women are allowed access to the golf course, its related facilities, tennis courts and the main dining areas, but women cannot vote, hold office or join the Club in their own right.

Walker has stated that "if the Committee deems it appropriate I am prepared in the event of confirmation or at an earlier time to give up membership in the Club unless by that time the situation at the Club has changed." (Quest. at 33.) At his hearing, he told the Committee that "I think the situation has changed even in the six months since Justice Kennedy [resigned his membership]." (Tr. at 43.) Later, in a follow-up response, Walker stated: "Such change requires continued participation within the Club...."

(Walker letter at 7.) Walker resigned February 15, 1989, one week before his renomination, but inexplicably he refrained from disclosing that fact until after Senator Cranston's announcement.

II. THE ABA CODE OF JUDICIAL CONDUCT

The primary source for the Committee's inquiry into a nominee's membership in discriminatory organizations is the ABA Code of Judicial Conduct. The Code's canons, rules and commentary have been influential in encouraging the judiciary to meet certain standards of ethical conduct. Forty-five states have adopted the Code in its entirety and the remaining five have enacted either a portion of the Code or their own standards.

Canon 2 of the Code states:

> "A judge should avoid impropriety and the appearance of impropriety in all his activities.

The accompanying rules provide:

> A. A judge should respect and comply with the law and should conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.
>
> B. A judge should not allow his family, social, or other relationships to influence his judicial conduct or judgment. He should not lend the prestige of his office to advance the private interests of others...."

The commentary to Canon 2 directly concerns the issue of improper appearances and club memberships.

> "Public confidence in the judiciary is eroded by irresponsible or improper conduct by judges. A judge must avoid all impropriety and appearance of impropriety. He must expect to be the subject of constant public scrutiny. He must therefore accept restrictions on his conduct that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly."
>
> "It is inappropriate for a judge to hold membership in any organization that practices invidious discrimination on the basis of race, sex, religion or national origin. Membership of a judge in an organization that practices invidious discrimination may give rise to perceptions by minorities, women, and others, that the judge's impartiality is impaired.

> Whether an organization practices discrimination is often a complex question to which judges should be sensitive. The answer cannot be determined from a mere examination of an organization's current membership rolls but rather depends on the history of the organization's selection of members and other relevant factors. Ultimately, each judge must determine in the judge's own conscience whether an organization of which the judge is a member practices invidious discrimination."

(Code of Judicial Conduct, American Bar Association, As Amended August 1984, emphasis added.)

The Judicial Conference of the United States, the policymaking body for federal judges, has adopted its own Code of Conduct for United States Judges. The commentary to its Canon 2A tracks the ABA Code commentary, specifically stating that it is "inappropriate" for federal judges to hold memberships in organizations practicing invidious discrimination. The Judicial Conference also issued an advisory opinion in 1982 urging judges to frequently examine their organizational memberships in light of the Code.

The California Judges Association, in revising its Code of Judicial Conduct, took an even stronger stand, by establishing a per se rule:

> C. It is inappropriate for a judge to hold membership in any organization, excluding religious organizations, that practices invidious discrimination on the basis of race, sex, religion or national origin.

The preamble to the California Code states that it serves as "a proper guide and reminder for justices and judges...and for aspirants to judicial office, and as indicating what the people have a right to expect from them." (California Code of Judicial Conduct, California Judges Association.)

III. PRECEDENTS

Thus far, the Senate Judiciary Committee has handled the issue of a nominee's membership in a discriminatory private club on a case-by-case basis, examining the facts surrounding each nominee and his or her membership. The Committee has looked at whether the nominee has resigned, when the resignation, if any, occurred in relation to the date of nomination and hearing, what actions the nominee took as a member to bring an end to the discrimination, and whether the nominee's activities outside of the club reflect a sensitivity to issues of racial and gender discrimination.

Anthony Kennedy. The nomination of Justice Kennedy bears directly on the facts of Walker's nomination, not only because

Kennedy is a former member of the Olympic Club, but also because his statements on the issue are some of the most recent and they have the gloss of judicial consideration. Moreover, Kennedy's actions and statements underscore the inadequacy of Walker's own efforts.

Prior to his nomination to the Supreme Court, Kennedy took affirmative action to bring an end to the gender discrimination at the Olympic Club. In late spring 1987, when the Club sponsored the U.S. Open, "publicity surfaced that [the Club] did not have some racial minorities as members...[a]nd the Club expressly excluded women." (Transcript of Hearing, Nomination of Anthony Kennedy, December 14, 1987, Afternoon Session, at 138.) Kennedy told the Committee that an article in the New Yorker, which extolled the egalitarian origins of the Club, "really triggered off my action." (Tr. at 138.) Consequently, Kennedy held discussions with the Club's legal counsel and wrote a letter to the legal committee, dated August 7, 1987, urging the Club "to make the egalitarian-spirit a reality" by removing the restrictive bylaws. (Tr. at 138.) The letter stated: "The fact is that constitutional and public morality make race or sex distinctions unacceptable for membership in a club that occupies the position that the Olympic Club does." (Tr. at 146.) As a result of Kennedy's efforts and warnings by the City Attorney, the board submitted proposed bylaw changes for the membership's approval.

The Olympic Club membership, however, rejected the proposals by referendum on October 7, 1987. Kennedy told the Committee that "I expressed my intention to resign and requested a meeting with the board of directors and the president to urge the board to continue on their attempted course of changing membership policy." (Questionnaire of Anthony Kennedy, at 48.) However, because events involving his nomination to the Supreme Court prevented a prompt meeting, on October 27, on the day he left for Washington to discuss the possibility of his nomination, Kennedy resigned his membership in the Olympic Club.

Kennedy had sought to end gender discrimination at another private club of which he was a member. The bylaws of the Del Paso Country Club originally used masculine pronouns, thus implying only full membership to males. In 1975, Kennedy "expressed displeasure with such implied restrictions" and the bylaws were changed to delete the single gender reference. (Quest. at 48). Kennedy, nonetheless, resigned on October 22, 1987 (five days before he resigned from the Olympic Club), stating that although the "club does not have a policy or practice of restricting the membership of minorities or women...the membership reflects few women or minority members." (Quest. at 48). "While, in my view, any perceived discrimination against women has decreased over the years since the bylaws were amended, I resigned from the club...in order to prevent membership from becoming an issue." (Quest. at 48). At his hearing, he added, "Women are admitted to the club as members, but a quick look at the roster shows there is not any kind of a representative mix based on the professional community." (Tr. at 149.)

Kennedy was also a member of the Sutter Club, which he described as a social club with approximately 600 members, but no women and few minorities. (Quest. at 45 et seq.) "After advising the club of my concerns about its [membership] practices, I resigned in 1980." (Tr. at 148.)

When asked whether whether any of the clubs practiced "invidious discrimination" within the meaning of the ABA Code, Kennedy stated: "As far as I am aware, none of these policies or practices were the result of ill-will. I recognize nonetheless that real harm can result from membership exclusion regardless of its purported justification. Therefore, I have supported efforts to broaden the membership of clubs to which I have belonged as a circuit judge and have resigned when those efforts have appeared to be unlikely to succeed." (Quest. at 50). At his hearing, he added that "none of these clubs practiced invidious discrimination. That term is not a precise and crystal clear term." (Tr. at 140). But "[t]here is no question that the injury and the hurt and the personal hurt can be there, regardless of the motive." (Tr. at 141).

Asked "why did it take so long" for him to resign from the Olympic Club, Judge Kennedy responded: "Discrimination comes from several sources. Sometimes it is active hostility. And sometimes it is just insensitivity and indifference. And over the years, I have tried to become more sensitive to the existence of subtle barriers to the advancement of women and of minorities in society. And this was an issue on which I was continuing to educate myself." (Tr. at 137).

Questioned about his resigning from the Sutter Club in 1980 but not from the others until 1987, Kennedy stated that he "felt that my membership there [the Sutter Club] was one where I was there only as a judge, and that it was inappropriate for me to belong. And I resigned in 1980 before the canons of ethics on the subject were promulgated [in 1984]....Everybody knew me there as a judge...." (Tr. at 142). He stated that probably "nobody knew me" at the Olympic Club, "and I basically used the athletic facility." (Tr. at 142).

Recent Examples: Mason, Erickson, Patterson, Babcock. Recently, the Committee refused to approve both a nominee failing to recognize the harmful effects of discrimination and the impropriety of continued membership and one who resigned only as a concession to win confirmation. On the other hand, the Committee approved nominees who not only resigned their memberships but who also had prior records demonstrating a commitment to equal justice.

Shannon Mason. Last year, the Committee confronted a nominee who had undertaken no efforts to change the discriminatory policies of his club and had resigned only to win confirmation. Mason, nominated to a Virginia district court, was a member of the James River Country Club, which never had a black member in its 56-year history. After some delay, he resigned from the club two weeks before his hearing.

At the request of Senator Metzenbaum, representatives from the Old Dominion Bar Association, Virginia's minority bar association, conducted its own investigation of Mason, including an interview with the nominee. Mason said during the ODBA interview that while he knew the club had no black members,

> "I never took the position that there is any kind of moral fire within my belly to go out and correct what is perceived to be wrong by some....I never looked upon myself as participating in an affirmative act of downgrading anybody. I looked upon myself as trying to provide by virtue of my hard work and success some of the creature comforts that were available to me and I could provide to my family".

(Transcript of ODBA Interview with Shannon Mason, May 23, 1988, at 37-38.) He also stated that he would have remained in the club if he had not been nominated for a federal judgeship. (ODBA Letter to Senator Howard Metzenbaum, June 13, 1988, at 3.) ODBA's report was highly critical of Mason, stating that Mason was "simply blind to the injustice of racial exclusion". (ODBA Letter at 7.) Because of opposition from the ODBA and the local NAACP chapter, both Senators Trible and Warner withdrew their support and the nomination died in Committee.

William Erickson. With Erickson's nomination, the Committee faced the issue of a nominee who refused to acknowledge that his club practiced discrimination, even though the bylaws explicitly stated so. Erickson, nominated to a district court seat in Colorado, had served seventeen years on the Colorado Supreme Court. He was also a member of the Cherry Hills Country Club, which at the time of his nomination did not have any blacks. In addition, the bylaws contained explicit provisions limiting the number of women members, mandated the immediate termination of the membershp of single women upon their marriage and required new application procedures for a married woman upon the death of her husband. The Committee had also been told by anonymous sources that the country club was notorious for "not welcoming" Jews.

Senator Paul Simon suggested to Erickson that he resign, but Erickson angrily refused. He maintained that the "bylaws are neutral." (Letter from William Erickson, to Sentor Paul Simon, July 5, 1988, at 1.) Erickson also stated that he believed his resignation would be deemed an admission of invidious discrimination and that members of the Committee would not believe that "my resignation would remove the taint allegedly created" by the club's membership policies. (Erickson letter at 3.)

> "Resigning in response to the political pressure exerted by your committee would be little more than a hollow gesture, motivated by my interest in becoming a federal judge, not in a belief that Cherry Hills practices

> invidious discrimination. Because I believe such conduct is inappropriate for one who aspires to the federal bench, I must decline your suggestion that I resign to enhance my chances for confirmation."

(Erickson letter at 3.) In a subsequent letter, Erickson softened his tone and told the Senator of his recent efforts to recruit black and Jewish members. (Letter from William Erickson, to Senator Paul Simon, August 22, 1988.) The Committee, however, took no further action on the nomination.

Robert Patterson. Nominated to a district court judgeship in New York, Patterson had a long, distinguished legal career in public service, including positions as board member of the Legal Aid Society, federal prosecutor, Senate committee counsel and counsel to the New York State Crime Commission. But he was also a member of a New York club, the Century Association, which once discriminated against women. Although the club no longer excluded women, he resigned before his hearing and told the Committee that "[u]nder these circumstances, some women litigants and attorneys might perceive potential bias. In my judgment I should take action to dispel any such perceptions." (Questionnaire of Robert Patterson, June 16, 1988, at 27.) The Committee approved his nomination.

Lewis Babcock. Babcock, nominated to a district court seat in Colorado, resigned from the Elks Club after becoming a state trial judge in 1983 because "I felt continued membership in the Elks was inappropriate with judicial service." (Questionnaire of Lewis Babcock, June 24, 1988, at 27.) He had also once been a member of the Rotary Club, but he resigned in 1983 because the organization refused to admit women. "I applaud the recent Supreme Court decision that overturns that policy." (Quest. at 26.) The Committee approved his nomination.

Historical Examples: Henderson, Anderson, Brown, Black. The Senate has confronted the issue of membership in discriminatory organizations with other nominations in the past.

Albert Henderson and Robert Anderson. In 1979, the Committee added a question on club memberships to the Senate questionnaire for judicial nominees. District court judges Henderson and Anderson, both nominated to the Fifth Circuit, responded that they held memberships in discriminatory private clubs. The International Union of Electronic Workers, Americans for Democratic Action, civil rights and women's rights groups testified against their confirmation because of their membership. In response, both judges announced that they would resign from their clubs.

Bailey Brown. That same year, the Senate Judiciary Committee, under the chairmanship of Senator Edward Kennedy, established a policy on the club issue. District court Judge Bailey Brown, nominated to the Sixth Circuit, received wide publicity because of his membership in a social club that allegedly discriminated against blacks. He refused to resign from the club. In considering the issue, the Committee reviewed commentary by legal scholars and Brown's record, which "certainly shows sensitivity towards civil rights matters." (Letter from Senators Edward M. Kennedy and Strom Thurmond to Judge Bailey Brown, September 11, 1979). The Committee notified Brown that it had favorably reported his nomination, but the Committee also stated:

> "In our view, it is unadvisable for a nominee for a federal judgeship to belong to a social club that engages in invidious discrimination. While we have not discussed all possible forms of discrimination, we feel that 'invidious discrimination' exists when the club's discrimination, in historical context, constitutes a stigma or badge of social inferiority. A social club's discrimination based on race or religion would ordinarily be considered invidious."

(Kennedy and Thurmond letter at 1). In response to the letter, Brown "suspended" his membership and promised to work to see that blacks became members of the club. Brown was later confirmed by the full Senate.

Hugo Black. Black's record on civil rights eclipsed his much earlier membership in an unquestionably discriminatory organization. When Franklin Roosevelt nominated the Alabama Senator to the Supreme Court in 1937, one of the major hurdles to Black's confirmation was his onetime membership in the Ku Klux Klan. Black acknowledged his membership, but emphasized that he resigned in 1925. After the Senate confirmed him, the Pittsburgh Post-Gazette published a series of article stating that Black was still a KKK member and had been secretly elected to life membership in 1926. Three days prior to taking his seat at the Court, Black defended himself before one of the largest radio audiences ever:

> "My words and acts are a matter of public record. I believe that my record as a Senator refutes every implication of racial or religious intolerance. It shows that I was of that group of liberal Senators who have consistently fought for civil, economic and religious rights of all Americans, without regard to race or creed....I did join the Klan. I later resigned. I never rejoined....I have had nothing whatever to do with it since that time...."

IV. SCHOLARLY COMMENTARY

When the Judiciary Committee faced the issue of discriminatory clubs raised by the 1979 Bailey Brown nomination, it sought the comments of several legal scholars. Following is a summary of their views.

Monroe Freedman. Professor Freedman, an expert on judicial ethics at Hofstra University, stated that membership in a club practicing discrimination "should create a heavy presumption against confirmation, with the weight of the presumption dependent upon the duration of membership and how long ago it was terminated. In addition, the candidate should be given the opportunity to overcome the presumption against confirmation by showing that he or she has established a record of active support for racial justice over a significant period of time." Freedman cited Hugo Black as an example.

Freedman provided two reasons for creating such a presumption: (1) the essential role of the federal judiciary in eliminating racism and (2) the disruption to effective judicial administration that results when judges recuse themselves, as required by law, because their impartiality might reasonably be questioned. As for an individual who refuses to resign his or her membership, Freedman argued for outright rejection of the nomination.

Freedman rejected the argument that disapproving a nominee because of his or her membership is tantamount to "guilt by association" by noting that the candidate has voluntarily chosen to join and remain a member of an organization that practices racism, especially if the candidate has failed to make any significant effort to change its policies. He also noted that a club does not practice racism as an abstract entity; its members do, and those that allow it to occur give their tacit approval.

Rejecting the argument that the candidate's freedom of association is being unconstitutionally impaired, Freedman stated that the controlling question is whether the criterion is a bona fide qualification for serving on the federal bench. He argued that it is an appropriate factor because such membership reflects a lack of essential sensitivity in an extremely important category of federal cases.4/

4/ Another powerful argument today is that the Supreme Court in recent years has rejected the same freedom-of-association argument on three separate occasions when it upheld state and local laws prohibiting discrimination by private organizations. A national consensus is emerging in regard to discriminatory clubs as many states and localities are exercising their police powers to eradicate discrimination by passing laws that prohibit such discrimination or, at least, do not reward the practice with the favorable tax treatment customarily given to organizations. For example, the Maryland Court of Appeals recently upheld the application of a state anti-discrimination law denying tax benefits to an all-male country club. Maryland v. Burning Tree Country Club, Inc., No. 106 (Md. Ct. App. March 8, 1989). Last summer, the membership of Washington, D.C.'s Cosmos Club voted to end its 110-year-old exclusion of women to prevent enforcement of the District's anti-discrimination law.

Freedman distinguished ethnic clubs because membership in such organizations do not reflect an insensitivity to discrimination and a stigma does not attach to those excluded. Furthermore, recusal would be necessary only in the most remote of circumstances.

Charles Fried. A professor of law at Harvard and former Solicitor General, Fried proposed a principle similar to Freedman's: that the Committee should reject a nominee who refuses to resign from a club that discriminates on the basis of race. He based his suggestion on the same reasons that Freedman did.

Fried noted that resigning may reflect the nominee's growing sensitivity to the issue, but he also argued that the nominee's club-related activities should be considered as well, to determine the nominee's actual sensitivity. He also stated that there is not much distinction between all-white clubs and all-male clubs.

Barbara Allen Babcock and Herma Hill Kay. Babcock, a law professor at Stanford, and Kay, at Berkeley, stated that clubs discriminating on the basis of race "are offensive because they recall a period in our history when blacks were sold as property ....The existence of such clubs today is evidence that there are still many who think that minorities are not fit persons with whom to associate." They contended that clubs that discriminate against women deliver a different, but no less offensive message -- that women have historically been assigned a second-class role in political and business affairs.

Babcock and Kay noted that little is actually known about nominees, and therefore, "It is impossible to assess, for most nominees, the basic ingredients of judicial performance: how their opinions will be informed, how they will deal with litigants and lawyers before them, or what their values may be." Consequently, to examine the internal attitudes of the nominees, such as open-mindedness and freedom from bias, the Senate must examine the few external indicators available, such as the formal associations that nominees choose to maintain. Babcock and Kay contended that membership in discriminatory clubs is such an indicator, and that gender discriminatory clubs should be viewed with as much suspicion and subjected to an inquiry as searching as the Senate typically gives to racially discriminatory clubs.

V. CONCLUSION

In addition to integrity and competence, nominees to the federal bench must demonstrate a commitment to equal justice. The commitment may be expressed in a number of ways, as indicated by the few nominations illustrated in this memorandum. In reviewing the qualifications of judicial nominees, the Senate Judiciary Committee since 1979 has examined the club memberships of nominees to determine the extent of that commitment. Thus far, the Committee has refrained from recommending lifetime judgeships -- positions often requiring judgments about discrimination -- for those who have shown themselves unable to recognize the ill effects of a club's racial and gender exclusionary practice and those who have proven reluctant to dissociate themselves from such clubs.

Vaughn Walker chose to maintain his membership in the Olympic Club more than a year after his first formal nomination, despite the highly publicized controversy surrounding the Club and its lawsuit with the City. Under oath, he defended the Club's purported efforts to diversify the membership, when the facts indicate an adamant refusal by the Club to admit blacks in the past and a continued refusal to grant full membership to women today. Unlike Justice Kennedy, Walker failed to promptly recognize the seriousness of the Club's discrimination against women, but instead stated that women barred from the Club may participate in a nearby all-female club -- thus, invoking and endorsing a "separate but equal" comparison. Also, unlike Justice Kennedy, his efforts to remove the gender discriminatory rules have been insubstantial and of recent vintage: informal chats, voting in favor of the bylaw change, and a letter to the Club magazine editor one month after his nomination hearing. In addition, his testimony to the Committee failed to directly address several questions posed to him, and he engaged in obfuscation of the facts about his and the Club's actions. Moreover, his recent resignation suggests not a growing awareness of discrimination issues, but rather an attempt to defuse the issue and win confirmation. In short, Walker clearly fails to meet the standards established by the Committee for judicial nominees.

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Women's Legal Defense Fund

November 9, 1989

FACT SHEET
ON THE NOMINATION OF VAUGHN WALKER

The nomination of Vaughn Walker to a federal judgeship in San Francisco has aroused considerable opposition, because of his longtime membership in a private club with an extensive history of discriminating against blacks and women, his meager pro bono record and his questionable litigation tactics.

The Walker nomination has met with opposition unprecedented for a federal district court nominee. Senator Alan Cranston, nearly all of the Democrats in the California delegation in the U.S. House of Representatives and the California state Democratic Party have announced their opposition. The Board of Supervisors of the City and County of San Francisco -- the governing council of the largest city within the Northern District of California -- has twice gone on record opposing Mr. Walker for the federal bench.

In April, Senator Cranston announced his opposition because of Walker's membership in the private club, stating:

> "Mr. Walker's basic perspective on this issue and his defense of the club's position cannot, in my view, be rectified by a belated resignation, calculated to win confirmation rather than prompted by recognition of the impropriety of maintaining such a membership."

Walker resigned February 15, 1989, one week before the announcement of his nomination, but inexplicably he refrained from disclosing that fact until after Senator Cranston stated his opposition.

The Olympic Club is a large social club in San Francisco with about 4,700 male members. Throughout its 128-year history, it refused to admit blacks until the City of San Francisco filed a civil rights lawsuit in 1987. In the spring of 1988, the Club began expediting the membership applications of blacks and by September 1988, it had admitted five black men.

However, the Club's bylaws still discriminate against women. Only wives and unmarried daughters of male members may join on a limited basis, and as members they cannot vote, hold office or use certain facilities. In October 1987, the Club membership by referendum soundly rejected a proposal to lift these restrictions, and a second attempt earlier this year similarly failed.

The Club is vigorously fighting the City's lawsuit, which now has focused on the exclusion of women. The Club is also attempting to circumvent the civil rights laws and recent U.S. Supreme Court holdings by "privatizing" internal business transactions -- for example, by refusing to accept payments by non-members.

Walker was a member of the Olympic Club for almost 15 years, and he knew that he had been under serious consideration for the judgeship since early 1986. Walker's own efforts to end discrimination within the Club have been insubstantial and mostly of recent vintage. In testimony before Congress, Walker repeatedly defended his membership, stating that the Club was making "substantial" progress in the recruitment of blacks. Walker attempted to downplay the invidiousness of the Club's gender discrimination by noting that an all-female athletic club was located one block from the Club's downtown facilities, thus invoking and endorsing a "separate but equal" comparison. For more than a year after his first nomination, Walker refused to resign from the Club, and then did so only a week before his second nomination.

In reviewing the qualifications of nominees to the federal bench, the Committee examines each nominee's record for evidence of a demonstrated commitment to equal justice. One indication of such a commitment is whether the nominee is a member of a club that discriminates on the basis of race, sex, religion or national origin -- bases that the U.S. Supreme Court has long considered arbitrary and denigrating. In 1979, the Committee, under the leadership of Senators Edward Kennedy and Strom Thurmond, firmly established a policy that a nominee for a federal judgeship should not belong to a social club that engages in invidious discrimination. Legal commentary uniformly supports this position, and the Committee has followed this policy in reviewing nominations over the last decade.

Walker chose to maintain his membership in a club that until last year discriminated against blacks and continues to do so against women. He testified under oath about the Club's so-called progress even as the Club was aggressively fighting the City to maintain its bar against women. Walker's actions concerning his club membership have consistently reflected an insensitivity to the harm resulting from racial and gender exclusion, especially in light of the well-known and particularly apt precedent established by former Olympic Club member, Justice Anthony Kennedy. Furthermore, Walker's recent resignation suggests not a growing awareness of discrimination issues, but a shrewd attempt to defuse the issue.

In addition, Walker has provided scant pro bono services during his seventeen years of private practice, despite the recommendation of both the American and California Bar Associations for attorneys to devote time to serving the *disadvantaged*. In his first questionnaire, Walker was able to identify only one example of pro bono work -- providing legal services to an Asian family. In his second questionnaire, he also listed his work with the California Law Revision Commission, his membership on the board of directors for a theatre group and some vague participation with the Bay Area Junior Achievement.

Finally, Walker's questionable litigation tactics bear directly on the issue of judicial temperament. In the case of *International Olympic Committee v. San Francisco Arts & Athletics* (N.D. Calif. 1982), aff'd, 707 F.2d 517 (9th Cir. 1983), aff'd, 107 S.Ct. 2971 (1987), Walker represented the Olympic Committee in its successful attempt to prohibit SFAA from using the word "Olympics" for its Gay Games. After prevailing at trial, Walker secured an attorney's fee award by attaching a lien to the home of SFAA founder, Dr. Thomas Waddell. Although the appeals court vacated the fee award, Walker refused to remove the lien, despite repeated requests from Waddell's attorney. Walker knew at the time that Waddell was dying from AIDS. According to a California legal expert on judgments, Walker had a legal duty to remove the lien from the property records. Waddell's probate attorney eventually obtained Walker's signature on several release forms, and the lien was removed four days after Waddell's death.

More recently, Walker served as the lead attorney for a group of elite investors who lost money in purchasing stock in a champion race-horse farm. In the *Spendthrift Farm Securities Litigation*, Walker and his co-counsel filed claims against numerous defendants around the country under RICO, federal securities statutes, state racketeering laws and the blue sky laws of Florida, Kentucky, Ohio, New York and Washington. Several attorneys for the defendants claimed that Walker's overzealous, "dragnet" approach included many peripheral, innocent people, that he and his firm was not forthcoming in discovery, and that he reneged on promises to dismiss and on a written settlement agreement. Eventually, all but two defendants were dismissed by the trial judge, and the two remaining -- one of whom represented himself pro se -- were cleared by the jury.

Nominees to the federal bench must demonstrate outstanding credentials, impeccable integrity, fairminded temperament and a strong commitment to equal justice. Vaughn Walker clearly fails to meet this standard.

VAUGHN WALKER
OLYMPIC CLUB CHRONOLOGY

Feb. 23, 1967	Olympic Club votes to retain membership restriction for "only white male citizens".
January 1968	Olympic Club quietly drops ban against black males but retains restriction for women. (Black males are not actually admitted until 1988.)
1974 or 1975	Walker becomes a member of the Olympic Club.
1978	ABA adopts policy that no ABA functions be held in clubs which exclude women or minorities.
Sept. 11. 1979	Judiciary Committee informs 6th Circuit nominee that "it is inadvisable for a nominee...to belong to a social club that engages in invidious discrimination."
March 1980	U.S. Judicial Conference adopts principle "that is inappropriate for a judge to hold membership in an organization which practices invidious discrimination."
March 1981	U.S. Judicial Conference adds the principle to the commentary of the Code of Judicial Conduct.
August 1984	ABA House of Delegates adopts resolution that "it is inappropriate for a judge to hold membership in an organization that practices invidious discrimination on the basis of race, sex, religion or national origin."
January 1986	Walker learns that he is under consideration for a vacancy in the Northern District of California.
April 22, 1986	Senator Wilson's representative interviews Walker for possible nomination.
Sept. 15, 1986	With extensive press coverage, California Judges Association amends its Code to state that "it is inappropriate for judge to hold membership in an organization, excluding religious organizations, that practices invidious discrimination on the basis of race, sex, religion or national origin."
Early 1987	Representative informs Walker that his name, along with others, will be sent to Senator for recommendation.

May 4, 1987	U.S. Supreme Court in the Rotary Club case unanimously holds that the California Public Accommodations Law prohibits all-male service clubs from excluding women from membership.
June 15, 1987	The Club hosts the U.S. Open golf tournament, and publicity surfaces that Club does not have any black members and expressly excluded women.
June 24, 1987	City Attorney of San Francisco warns Club that its discrimination against blacks and women violates state and municipal anti-discrimination laws.
July 1987	Board submits to the Club membership proposed amendments to bylaws to extend voting rights to women.
July 24, 1987	Senator Wilson informs Walker that he has been selected and his name will be forwarded to the Justice Department.
Aug. 7, 1987	Ninth Circuit Judge and Club member Anthony Kennedy writes to the Club, urging adoption of the proposed amendments.
Aug. 13, 1987	Department of Justice interviews Walker.
Oct. 7, 1987	Olympic Club membership votes 2,082 to 1,540 to reject the proposed amendments.
Oct. 27, 1987	Judge Kennedy resigns from Olympic Club.
Nov. 2, 1987	San Francisco City Attorney files action against Club for violations of state and municipal civil rights laws.
Nov. 11, 1987	ABA representative interviews Walker.
Dec. 14, 1987	Judiciary Committee holds hearing on Anthony Kennedy nomination and questions nominee extensively about his membership in the Olympic Club and other clubs.
Dec. 18, 1987	President Reagan nominates Walker.
April 28, 1988	Judiciary Committee holds hearing on Virginia district court nominee, Shannon Mason, and Senator Metzenbaum questions him about his membership in a racially-exclusive country club.
May 16, 1988	Judiciary Committee holds hearing on Colorado district court nominee, state supreme court justice William Erickson, and Senator Simon questions nominee about his membership in country club that discriminates against women, minorities and Jews.

June 13, 1988	Judiciary Committee holds hearing on Vaughn Walker and Senator Leahy questions him extensively about his membership in the Olympic Club.
June 20, 1988	U.S. Supreme Court in New York State Club Association upholds New York City law that prohibits discrimination by private clubs with over 400 members and provides regular service to businesses and non-members.
June 30, 1988	Club changes its methods of conducting business in order to "privatize" its transactions, by no longer accepting payments by non-members, or cash or credit card transactions by members; dues and charges are to be paid by personal check. Issues press release that "it finds itself forced to defend the fundamental rights of its members against the forced arm of political oppression."
July 18, 1988	Walker writes a letter to the editor of the Club magazine, the Olympian, urging the Club to fully admit women.
September 1988	Club has admitted five black males by this point.
Sept. 22, 1988	Walker responds to follow-up questions from the Judiciary Committee.
Feb. 15, 1989	Walker submits resignation letter to Olympic Club president.
Feb. 22, 1989	President Bush announces the nomination of Walker.
April 4, 1989	Senator Cranston submits letter of opposition to the nomination.
April 5, 1989	Senator Wilson's office discloses to the press that Walker resigned from the Olympic Club in February.
May 11, 1989	Judiciary Committee holds hearing on 9th Circuit nominee, Ferdinand Fernandez, who describes his numerous efforts to amend the men-only policy of the University Club in Claremont California.
Aug. 5, 1989	Senate returns nomination under 30-day recess rule.
Sept. 7, 1989	President Bush resubmits the nomination.

Prepared by the Alliance for Justice's Judicial Selection Project and the Federation of Women Lawyers.

Alliance for Justice
A National Association of Organizations Working for Equal Justice
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NAN ARON
Executive Director

FRANCES DUBROWSKI
Chair

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November 15, 1989

FACT SHEET
ON THE NOMINATION OF VAUGHN WALKER:
THE SECOND HEARING

At his hearing on Thursday, November 9, 1989, Vaughn Walker revealed by his own testimony that his resignation from the Olympic Club was purely a matter of expedience to win confirmation. He engaged in obfuscation of the facts and deception before the Committee and once again demonstrated his unfitness for the bench. The only effort Walker has taken in regard to the Olympic Club's discriminatory policies is to create a paper record, not of actions and deeds, but of behind-doors conversations and unverifiable votes, in order to bolster his chances of confirmation.

1. ONLY AFTER SENATOR CRANSTON ANNOUNCED HIS OPPOSITION DID WALKER OFFICIALLY RESIGN FROM THE CLUB.

The facts are that Senator Alan Cranston announced his opposition to Walker on April 4, and the Olympic Club did not receive Walker's resignation letter until April 13. The board of directors made the resignation effective April 1. (Tr. at 36)

Walker presents an implausible and convoluted set of circumstances surrounding the letter's arrival at the Club. He testified that he wrote the letter, dated it February 15, and sent it that same day to David Dawson, a friend and former president of the Club, for his review, and that Dawson offered to deliver the letter to the Club. (Tr. at 38) Walker also told the Committee that "I do not know when the club received the letter....Mr. Dawson said he would deliver it to the club and handle it, and that was perfectly satisfactory with me. I wanted it handled in that fashion." (Tr. at 39) Walker also told the Committee that he learned "three or four weeks ago" that Dawson had sent the letter to the Club "some time either in February or March and it sat on [the Club manager's] desk for a number of weeks." (Tr. at 39)

2. WALKER CONTINUED TO USE THE CLUB AFTER HIS RESIGNATION.

Walker admitted that although he had sent his resignation letter to Dawson on February 15, 1989 -- one week before his nomination -- he continued to use the Club through the end of the month. Walker told the Committee that "it was my intention having paid [my] dues through the end of February to use it and then stop. And that is exactly what I did." (Tr. at 42) In fact, he paid his dues up through March. Walker's desire to get his money's worth right up to the minute of nomination only underscores his blindness to the impropriety of maintaining membership in and frequenting an invidiously discriminatory club.

3. WALKER HAS CONSISTENTLY SHOWN A LACK OF CANDOR BEFORE THE COMMITTEE.

The only witness to Walker's alleged, longtime efforts to change the Club's discriminatory policies has himself demonstrated a bias against women.

The Committee received a letter from David Dawson, which stated that since 1975 "Mr. Walker lobbied extensively for the inclusion of women in the club". (Tr. at 21) In addition, Walker testified that Dawson "is fully supportive of changing the bylaws and is committed to that objective as I am, and has worked in the club to achieve that objective." (Tr. at 38) Louise Renne, the City Attorney of San Francisco, who has filed a lawsuit against the Club, provided uncontradicted testimony to the Committee that it was revealed during the course of litigation discovery that Dawson had described female applicants to the Club as "non-entities". (Tr. at 73)

Walker gave false testimony regarding the timing of his nomination and the Lawyers Club resolution supporting the City's suit against the Olympic Club.

During the recent hearing, Senator Specter asked Walker when had he drafted the Lawyers Club resolution supporting the City's position in the Olympic Club litigation and "had [he] been nominated or under consideration for a judgeship at that time?" (Tr. at 52) Walker told the Committee that the resolution was drafted in November or December 1987, and that "I had not been nominated. I believe I had been interviewed in, I believe, in September about the possibility of a nomination". (Tr. at 52)

In fact, according to his first questionnaire, Walker was first interviewed by Senator Wilson's representative about a judicial nomination in April 1986. In early 1987, the representative told Walker that his name would be submitted to Senator Wilson. Senator Wilson telephoned Walker personally on July 24, 1987, to say that his name would be submitted to the Justice Department. On August 13, 1987, several Justice Department officials interviewed Walker. The ABA 9th Circuit representative interviewed him on November 11, 1987, and President Reagan nominated Walker on December 18, 1987.

Walker's testimony in June 1988 that the Club has instituted a policy of expediting the applications of blacks was refuted.

In June 1988, Walker stated that the Club was expediting the applications of several black members. According to the City Attorney, the Club has not initiated an "accelerated" membership policy for black applicants, and the Club in its own publications denies any special preference in admission. Renne also stated that according to the latest information received by her office, only two black men have been admitted as members. The total membership of the Club is 4,700. (Renne Testimony, at 6.)

Walker was disingenuous in telling the Committee that he would not express an opinion on the City's pending litigation against the Club.

Last year, asked by the Committee in follow-up questions for his opinion about the City's charge that the Club violates the California Unruh Civil Rights Act, Walker declined to comment, stating that "I believe it is inappropriate for a judicial nominee to express an opinion on pending litigation." (Letter of September 22, 1988.) However, in a letter to Renne, dated July 8. 1988, Walker apparently saw nothing inappropriate in giving his unsolicited opinion to the City Attorney:

> "While no one can predict how extensively the courts may permit government to regulate private club membership practices, the recent *New York Club Association* case suggests that the Supreme Court perceives that there are limits. It is not now possible to say whether The Olympic Club might be successful in placing itself beyond any such limits, but assertions that the *New York* case settles the issue are, at best, premature. *Attempting to force the issue through litigation will be time consuming and, no doubt, expensive.*

(Attachment to Renne Testimony)(emphasis added).

Walker minimized Justice Kennedy's actions regarding the Olympic Club in order to enhance his own meager efforts.

At the November 9, 1989, hearing, Senator Heflin asked Walker if he "recall[ed] whether [Justice Kennedy] took any active role relative to trying to bring about a change". Walker replied, "I do not know that he did. I do know that in connection with his confirmation hearings, one letter that he sent to a Mr. Anthony Diepenbrock, who is a lawyer in San Francisco, was published. *I believe, Senator Heflin, that that is the only expression of Justice Kennedy's views on the subjects that appeared in the record of his confirmation, and it is the only thing I am aware of.*" (Tr. at 50) (emphasis added).

In fact, the public record of Anthony Kennedy's confirmation documents his significant efforts to change the Club's policies. At the June 1988 hearing, Senator Leahy reminded Walker about Justice Kennedy's actions in detail, quoting from Justice Kennedy's questionnaire, his live testimony before the Committee, and his resignation letter to the Club (which was placed in the record of Walker's hearing last year). (Transcript of June 13, 1988, pp. 42-44, 46). Given the wide publicity of Kennedy's resignation from the very same club, it defies reason that Walker cannot remember any more details about Justice Kennedy's efforts. Finally, it also should be noted that Kennedy's hearing occurred only four days before Walker was nominated.

CONFIRMATION HEARING ON: ARTHUR D. SPATT, EDWARD W. NOTTINGHAM, AND EDWARD J. LODGE

WEDNESDAY, NOVEMBER 15, 1989

U.S. Senate,
Committee on the Judiciary,
Washington, DC.

The committee met, pursuant to notice, at 2:04 p.m., in room SD-226, Dirksen Senate Office Building, Hon. Herbert Kohl presiding.

Also present: Senator Thurmond.

OPENING STATEMENT OF SENATOR KOHL

Senator Kohl. This hearing will come to order.

This afternoon, the Judiciary Committee will conduct a hearing on three district court nominees: Arthur Spatt, for the Eastern District of New York; Edward Nottingham, for the District of Colorado; and Edward Lodge, for the District of Idaho. We are very pleased that all of you gentlemen could come here on such short notice.

As is customary, we will hear first from Senators who wish to introduce nominees to the committee. But before we turn to them, let me state for the record that each nominee today has completed a detailed questionnaire on his qualifications, his experience, finances, and philosophy. The publicly-available portions of the questionnaire will be printed in the record of this hearing.

We will also keep the record open for a limited time for questions to the nominees by members of the committee who are unable to be present this afternoon, and we will place in the record the full introductory statements of home State Senators and Congressmen.

Finally, I would like to note that at the request of the Chairman and ranking minority member, we are making an exception to the committee procedures for processing judicial nominations.

Our policy, which was adopted in 1985, requires that no hearing will be scheduled on a nominee until at least 3 weeks have elapsed from the time we receive the nomination. Judge Lodge is 4 days short of the minimum time.

However, the committee has occasionally waived this policy when no Senator objects and special circumstances are present, and today special circumstances do exist. The Senate is likely to recess very soon and it won't reconvene for many weeks. We are happy to put Judge Lodge on the hearing agenda, but we need to point out that this is an exception to our policy and it is not done lightly.

I will put a copy of the committee policy on procedures for judicial nominees into the record, if there is no objection.

[The document referred to follows:]

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United States Senate
COMMITTEE ON THE JUDICIARY
WASHINGTON, DC 20510

December 5, 1985

AGREEMENT BETWEEN REPUBLICANS AND DEMOCRATS CONCERNING COMMITTEE PROCEDURES FOR JUDICIAL NOMINATIONS

Hearings will be scheduled no sooner than three weeks from the date the Judiciary Committee questionnaire is received.

There will be at least one week from the hearing date to the time the nomination is placed on the agenda of the Committee. Thereafter, if necessary, the one week holdover may be used.

There will be no more than six nominees scheduled at any one hearing. The Committee will reconsider this limitation 5 months from today.

There will be no more than one so-called controversial nominee scheduled at any one time and that hearing will be scheduled separately from routine hearings.

Committee questionnaire to be revised to include additional questions as agreed to by both Majority and Minority. The net worth disclosure statement submitted by each nominee shall be available to the public.

Strom Thurmond

Joseph R. Biden, Jr.
Ranking Minority Member
Committee on the Judiciary

Strom Thurmond
Chairman
Committee on the Judiciary

Robert C. Byrd

Robert C. Byrd
Minority Leader

Robert Dole
Majority Leader

Senator KOHL. What I would like to do is take opening statements from Senators representing the nominees, and then we will proceed with our interviews. So, first, we will hear from Senator Armstrong, and then Senator Wirth.

STATEMENT OF HON. WILLIAM L. ARMSTRONG, A U.S. SENATOR FROM THE STATE OF COLORADO

Senator ARMSTRONG. Mr. Chairman, thank you very much. I appreciate the opportunity to appear, and I was enormously encouraged by your observation that we are about to adjourn for a period of several weeks. [Laughter.]

Mr. Chairman, I am honored to appear on behalf of my friend and constituent, Edward Nottingham, of Grand Junction, CO, who has been nominated by President Bush to serve as U.S. district judge.

In Colorado and throughout the legal profession, Mr. Nottingham is known for unquestioned integrity and for outstanding legal scholarship and ability. He has had a varied career. He served with distinction in the U.S. Attorney's Office, as well as in private practice, both in the Denver area and in western Colorado.

Mr. Nottingham is a graduate of Cornell University; received his law degree from the University of Colorado in 1972; served, as I mentioned, in the office of the U.S. attorney, in the district court, in the firm of Sherman & Howard, which is one of the most distinguished firms in our State, and most recently has relocated to Grand Junction where he established his own successful firm.

Mr. Chairman, I have a statement which I would ask be inserted in the record, but let me just indicate briefly that I recommended Mr. Nottingham to the President after an extensive survey of lawyers and judges throughout the State and upon the recommendation of a distinguished committee which helps me to screen applicants and to find people who are well-qualified for this position. And so I am able to speak to the committee today with a great deal of confidence and to recommend him most highly.

[The prepared statement of Senator Armstrong follows:]

TESTIMONY OF SENATOR WILLIAM L. ARMSTRONG ON BEHALF OF EDWARD WILLIS NOTTINGHAM, JR.

SENATE JUDICIARY COMMITTEE
NOVEMBER 15, 1989

Mr. Chairman, I am honored to appear today before your distinguished committee to express my strong support for Edward W. Nottingham of Grand Junction, Colorado to serve as United States District Judge for the District of Colorado.

In Colorado, Edward Nottingham is known for his sound legal judgment and unquestioned integrity. Throughout his career he has met many legal and administrative challenges with great skill, creativity, and dedication.

Mr. Nottingham has had an impressive career. His distinguished service in the U.S. Attorney's office as well as his accomplishments in private practice will serve him fittingly as a District Judge. He will bring both a scholarly and practical approach to the work of the District Court.

Mr. Nottingham is a graduate of Cornell University and received his law degree from the University of Colorado in 1972. Following law school, Mr. Nottingham worked in the U.S. District Court, District of Colorado. He then served with the U.S. Attorney for the District of Colorado. After his distinguished service in the public sector, he then served in the private firm of Sherman & Howard in Denver, Colorado. In

1980 he was asked to become a partner in the firm. In 1987, he relocated to Grand Junction, Colorado to start his own law firm, and he has established a very successful firm.

Mr. Nottingham's legal expertise is broad and extensive. He is a member of the Colorado Bar Association, Denver Bar Association, Mesa County Bar Association and the American Bar Association. He has great experience in civil litigation, and early in his career he was assigned to the Criminal Division in the U.S. Attorney's office.

In conclusion, I strongly believe Edward Nottingham will bring integrity and leadership to the District Court, and I fully endorse and respectfully urge his appointment.

Senator KOHL. Thank you, Senator Armstrong.

Senator Wirth.

STATEMENT OF HON. TIMOTHY E. WIRTH, A U.S. SENATOR FROM THE STATE OF COLORADO

Senator WIRTH. Thank you very much, Mr. Chairman. I, too, am delighted to be here and would like to associate myself with the remarks of the distinguished senior Senator from the State of Colorado.

Ed Nottingham is truly a Coloradan. He is the son of cattle ranchers; grew up on the Western Slope in Colorado, country, I know, familiar to you. He has had a very distinguished legal career, and chose to relocate his family and children from Denver back to the Western Slope to continue his practice.

We have talked about his nomination. He knows what he is getting into, knows where he is headed in becoming involved in the judicial side of this business.

This is a vacancy, Mr. Chairman, that has been extant for 5 years, and it is our hope that we can move very expeditiously to get this vacancy filled. Senator Armstrong has a very good committee, chaired by Ted Halaby, which has done a sorting job of excellence. I have a committee, chaired by Dan Hoffman, that has also spent a good deal of time with Mr. Nottingham.

I think we are hopeful that the precedent that you set today in terms of waiving committee procedures might also be waived in the way in which you might act upon Mr. Nottingham, and we would hope you would be able to bring his nomination to the floor before we leave.

As I say, this vacancy has been extant for 5 years. If there is some way in which, assuming the committee's judgment is that of Senator Armstrong and mine, our committees and a broad cross-section of the bar in Colorado—this nomination can be moved expeditiously, the citizens of Colorado would be grateful.

I can assure you that if confirmed by the Senate, Mr. Nottingham will be greeted with open arms by a number of extraordinarily overburdened Federal judges.

So with that, Mr. Chairman, I greatly appreciate the speed by which the committee has operated so far, and we would deeply appreciate your further use of committee-setting precedents and allow us, without prejudicing any future items, to bring Mr. Nottingham's name to the floor as soon as possible.

Senator KOHL. Well, it is a good suggestion and we are going to make every attempt to move these nominees this week.

Senator ARMSTRONG. Thank you, Mr. Chairman.

Senator WIRTH. Thank you very much, Mr. Chairman.

Senator KOHL. Thank you for coming. Thank you for your statements, gentlemen.

On behalf of Judge Lodge, we have Senator McClure and Senator Symms.

Senator McClure.

STATEMENT OF HON. JAMES A. McCLURE, A U.S. SENATOR FROM THE STATE OF IDAHO

Senator McClure. Mr. Chairman, thank you very much, and I do want to express my appreciation at the outset for the actions of this committee expediting the opportunity for Judge Lodge to appear and be heard.

I understand it is unusual and I am heartened by that action. It is also very helpful because this matter has been pending since Judge Callister announced his intention to take senior status some months ago, and so it is with a great deal of pleasure that I am able to commend him to you and to thank you for expediting the matter.

Mr. Chairman, you have the record before you, and there is very little I can add. I will put in the record my statement, if I may do so. I just wanted to call attention to one or two things that perhaps might not have come through in the formal statement because I know the formal record that you have will go into all of the experience that Judge Lodge has as a practicing judge for the last 25 years in several different forums.

There certainly has never been before this committee a more qualified or better-prepared candidate for nomination and confirmation as a U.S. district judge. But there are a couple of things outside that might be of interest that would at least be worth noting here.

It isn't just that he is the youngest judge ever appointed to the district court in Idaho. He is believed to have tried more murder cases than any other judge in the history of our State. He is the past president, vice president, and secretary of the Idaho District Judges Association. He has almost universal acceptance and support of the organized bar in our State, and his nomination was met with wide acclaim throughout the State in bipartisan and professional and non-professional circles. So this is a man with wide experience and wide reputation.

You can also look at part of his lifetime experience that might tell you something of the kind of man he was. For example, Judge Lodge is a three-time high school and junior college All-American football player. He is a charter inductee of the Boise State University Hall of Fame, and he has received numerous other awards outside of the legal profession. He is a man who is certainly well known in his community and is supported by the community. He has a host of friends in every walk of life.

I would like to just note the presence in the room today of something that is important and significant for him, and it is for me. His family is all here: Patty Anne, his wife—they are all sitting in the front row—Mary Jean, Edward Ryan, and Anne Marie. This is a family that is going to serve this country in one more new capacity.

Thank you very much, Mr. Chairman.

[The prepared statement of Senator McClure follows:]

MR. CHAIRMAN, I am pleased to appear before the Senate Judiciary Committee to introduce Judge Edward Lodge who has been nominated to be United States District Judge for the District of Idaho. I believe Judge Lodge is an outstanding jurist and will make a positive contribution to the federal judiciary. He has been nominated to take the place of an outstanding judge, Judge Marion Callister, who has taken senior status.

Judge Lodge has a wealth of experience on the bench. He has spent the last 25 years of his life serving as a judge. In addition to his work as a trial attorney, he has served as Probate Judge, District Judge, Administrative District Judge and most recently U.S. Bankruptcy Judge. When Judge Lodge was first mentioned as a possible candidate for the District Court, I received many calls, cards and letters saying that without a doubt Judge Lodge would be the best choice for this position. What amazed me most was that I heard from plantiffs and defendants alike, from both political parties, and from a state supreme court justice and other state court judges who might be considered for the job. They all referred to Judge Lodge as "fair" and "impartial", a man with great abilities and intellect.

Mr. Chairman, in addition to his vast experience on the bench, Edward Lodge received a merit award for his work as a U.S.

Bankruptcy Judge. He is the recipient of the Kramer Award which is given annually to a person "who best exemplifies excellence in Judicial Administration and who makes a significant contribution to the improvement of justice in the Idaho State Courts." He was the youngest judge ever appointed to the District Court in Idaho and is believed to have tried more murder cases than any other judge in the history of our state. He was the past President, Vice-President and Secretary of the Idaho District Judges Association.

You can look at his vast experience in the legal profession and easily conclude that he is well suited for the federal district court. However, that is only a part of his life time experience. For example, Judge Lodge is a three time high school and junior college All American football player. He is a Charter Inductee of the Boise State University Hall of Fame and has received numerous other awards outside the legal profession.

Mr. Chairman, I can say without reservation that Judge Lodge has distinguished himself as a fair, impartial jurist of the highest caliber. His reputation among the legal community in Idaho and generally by the people of Idaho makes him an excellent choice. I recommend him to this committee as a man who will uphold the law and make a great contribution to the federal judiciary. I hope the committee will move quickly on his nomination.

Senator KOHL. Thank you, Senator McClure.
Senator Symms.

STATEMENT OF HON. STEVE SYMMS, A U.S. SENATOR FROM THE STATE OF IDAHO

Senator SYMMS. Thank you very much, Mr. Chairman, and I would like to join my senior colleague in thanking the committee for making this effort, knowing that you just have received nomination and that we are going to be able to move forward with it.

I would also like to take this opportunity to personally congratulate Senator McClure as our senior Senator, who has the responsibility through our traditional system in the U.S. Senate to make the selections for Federal judges. I know he went through many, many qualified candidates, and there was one name that always kept coming up. We have now, since I have been in the Senate, appointed two Federal judges, and Ed Lodge's name has always been right at the top of that selection list.

I would ask unanimous consent to put my remarks in the record, also, and just say very briefly that the Lodge family—Ed literally is my neighbor. His property where he has raised his family joins the property that my family owns. I have known the family my entire life. His youngest brother, Raleigh, was really my best friend in high school and in college.

And then after Ed completed his undergraduate work at the College of Idaho, where he was also a small college All-American halfback, he came to the University of Idaho to law school and tried to keep Raleigh and me out of trouble. That was a thankless task on his part, but he did well at it. So he has literally been a friend of mine my entire life.

The first time I met Ed—we went out to the Lodge family's Cow Creek ranch, which is out next to the Idaho-Oregon border in the cow country. He was out there cowboying, spending his summers working out there at this huge spread branding calves.

I was enough younger than Ed that I was quite impressed because he was the local hero, the halfback on the high school football team, and I have known him and admired him and respected him ever since that time.

When Judge Lodge was named to be a Federal bankruptcy judge and left Caldwell, they had a farewell party for him, and nearly everyone in town was there just as a tribute to this man and the respect that people held for him as the district judge for over 25 years in Caldwell, Idaho.

I think President Bush made a fine selection. I am very proud to be able to support this nomination, and I thank the committee for their expeditious action on it.

Senator KOHL. Thank you, Senator Symms, and your statement will be entered into the record, without objection.

[The prepared statement of Senator Symms follows:]

Page 1

SENATOR STEVE SYMMS
Introduction of
Honorable Edward James Lodge
before the
U.S. Senate Judiciary Committee
November 15, 1989

Mr. Chairman, let me begin by thanking you and all the Committee Members for holding this confirmation hearing promptly. I realize this nomination was just received on October 31, and I am grateful the Committee has not decided to forego the hearing until next session.

I am very pleased to sit before you today to introduce my life-long friend, now the President's nominee to be United States District Court Judge for the District of Idaho, Ed Lodge. Ed is an outstanding jurist and a truly fine human being, and it is a privilege for me to have this opportunity to introduce him to my Senate colleagues.

Ed and I have known each other since we were children growing up together in Caldwell, Idaho. All of his life, Ed has been among the most respected, trusted, and well-liked individuals in our community. As a practicing lawyer and then a judge, Ed has developed a state-wide reputation for unwaivering honesty and integrity. I don't believe the President could have selected a person for this position who commands broader trust and support among the people and legal profession of Idaho than Ed Lodge.

Ed is a 26-year veteran of the bench in our state. He began that service as a Probate Court Judge in Canyon County in June 1963, was subsequently appointed and then elected State District Court Judge in 1965, and served in that position until 1988 when he was appointed to the U.S. Bankruptcy Court. In every instance, he has left his mark as an outstanding jurist who is committed to public service. Attesting to his competence and legal acumen is the strong support Ed's nomination has received from members of the Idaho legal community.

Mr. Chairman, I hope the Committee will move this nomination ahead expeditiously. I believe the people of Idaho and the entire federal judiciary will be well served and well represented during Ed Lodge's tenure as Federal District Court Judge for Idaho.

Senator McCLURE. Thank you very much, Mr. Chairman.

Senator KOHL. Thank you.

Senator McCLURE. Thank you, Senator Thurmond.

Senator THURMOND. We are glad to have you with us. I just want to say to the judge that you have got two very fine, able Senators backing you. The President has nominated you. There is no reason you shouldn't be confirmed. You have got a good reputation. I will do all I can for you.

Judge LODGE. Thank you, sir.

Senator KOHL. And now Judge Spatt and Senator D'Amato. Senator D'Amato, we will be very happy to have your statement on behalf of Judge Spatt.

STATEMENT OF HON. ALFONSE M. D'AMATO, A U.S. SENATOR FROM THE STATE OF NEW YORK

Senator D'AMATO. Thank you, Mr. Chairman. Mr. Chairman, this is indeed a great honor for me to have this opportunity to present to the committee the nominee of President Bush, Judge Arthur Donald Spatt for the U.S. District Court for the Eastern District of New York.

Judge Spatt is a man of exemplary reputation, for whom his colleagues in the State judiciary and the public at large have the highest regard. I might add, Mr. Chairman, that Judge Spatt came to the bench after 30 years of practice as an outstanding litigator. Why he gave that career up is something that many people marveled at.

Certainly, he undertook the most incredible of challenges where he ran in a district that very, very few Democrats at any time were ever elected. Judge Spatt is a Democrat, was elected to the bench, and I believe returned a second time. And as a jurist, he continued to win the praise and the plaudits of all who came to see and to know him.

Within a matter of 4 years, he was promoted to presiding jurist of all of Long Island, Nassau and Suffolk County. That meant that he was literally in charge of 100 other jurists in one of the busiest jurisdictions in the country.

Four years later, Governor Cuomo, seeking to bring the best into the system, once again promoted him, and this time to associate judge of the Appellate Division, where he now serves.

I am proud that this distinguished New York jurist has won the recommendation of our judicial screening committee, has been approved as highly qualified by the American Bar Association and the Bar Association of the City of New York, and I am even prouder that our President has gone forth and nominated Judge Spatt, given his ability, not his politics, but given his ability.

And so I am delighted to present a dear friend, whom, I might add, I met a number of years ago when he was seeking local office, one of those very difficult, if seldom attained, elective positions as a Democrat in our town, and I was running as a Republican. That had to be close to 20 years ago, and we were on opposite sides of the fence.

Senator KOHL. You didn't say who won.

Senator D'AMATO. Well, he lost that time and I was fortunate. After all, it is not too difficult getting elected in my town as a Republican. But I think in this case, Mr. Chairman, the people win. And, again, I want to commend the President and his committee for having the perception of reaching out to bring in the best and the finest, because that is what the system deserves and that is what Judge Arthur Spatt will bring to the system. I commend him to you, Mr. Chairman, and to Senator Thurmond and to this committee.

[The prepared statement of Senator D'Amato follows:]

STATEMENT

SENATE JUDICIARY COMMITTEE

ARTHUR DONALD SPATT, NOVEMBER 15, 1989

DEAR MR. CHAIRMAN:

I WELCOME THIS OPPORTUNITY TO ENDORSE THE NOMINATION BY PRESIDENT BUSH OF JUDGE ARTHUR DONALD SPATT FOR THE U.S. DISTRICT COURT FOR THE EASTERN DISTRICT OF NEW YORK. JUDGE SPATT IS A MAN OF EXEMPLARY REPUTATION FOR WHOM HIS COLLEAGUES IN THE STATE JUDICIARY AND THE PUBLIC AT LARGE HAVE THE HIGHEST REGARD.

A CUM LAUDE GRADUATE OF THE BROOKLYN LAW SCHOOL, HE CULMINATED AN ACADEMIC CAREER BEGUN AT OHIO STATE UNIVERSITY AND INTERRUPTED BY TWO YEARS OF HONORABLE SERVICE WITH THE U.S. NAVY DURING W.W. II.

DURING HIS ALMOST THIRTY YEARS OF PRIVATE PRACTICE, JUDGE SPATT SPECIALIZED IN A VARIED LITIGATION PRACTICE, INCLUDING BOTH CIVIL AND CRIMINAL CASES. HOWEVER, A CAREER ON THE BENCH INTERESTED HIM MOST AND THE CONFIDENCE OF THE ELECTORATE IN NASSAU COUNTY GAVE HIM HIS FIRST JUDICIAL RESPONSIBILITY ELEVEN YEARS AGO.

JUDGE SPATT WAS ELECTED AS A JUSTICE OF THE SUPREME COURT OF THE STATE OF NEW YORK IN NOVEMBER OF 1978 AND WITHIN FOUR YEARS WAS APPOINTED THE ADMINISTRATIVE JUDGE FOR ALL THE COURTS IN NASSAU COUNTY. HAVING ATTRACTED THE ATTENTION OF GOVERNOR MARIO CUOMO FOR HIS DISTINGUISHED SERVICE AND LEGAL AND ADMINISTRATIVE ABILITIES, JUDGE SPATT WAS APPOINTED TO HIS PRESENT POST AS THE ASSOCIATE JUSTICE OF THE APPELLATE DIVISION HE SERVES CURRENTLY, THE BUSIEST JURISDICTION IN THE UNITED STATES.

IN ADDITION TO BEING RECOMMENDED BY MY JUDICIAL ADVISORY COMMITTEE, JUDGE SPATT HAS RECEIVED THE APPROVAL OF THE ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK AND HAS BEEN RATED HIGHLY QUALIFIED BY THE AMERICAN BAR ASSOCIATION.

I AM PROUD THAT THIS DISTINGUISHED NEW YORK JURIST HAS ACCEPTED THIS NOMINATION. I KNOW THAT, IF CONFIRMED, HE WILL LIVE UP TO THE HIGHEST TRADITION OF THE BENCH AND TO THE BEST EXPECTATIONS OF THIS COMMITTEE.

THANK YOU MR. CHAIRMAN.

Senator **Kohl**. Thank you, Senator D'Amato.

Senator **Thurmond**. We are very pleased to have you here, and you have a very powerful Senator here backing you. And with the President's nomination, I don't think you will have any trouble getting confirmed. We have a good chairman here who will put you right through.

Senator **D'Amato**. I thank the Chair and I thank the committee.

Senator **Kohl**. Thank you. Judge Spatt, if you will stay, we will start with you.

I would like to briefly pay my respects back to Senator Thurmond. I am a brand new member of the Judiciary Committee and a brand new Member of the Senate, and you wouldn't say that Senator Thurmond is a brand new Member of the Senate. He has been here for many years, and I have particularly appreciated his kindness to me. It has been extensive and very important to me in acclimating myself on the committee, all the kindnesses I have had from Senator Thurmond, and I do appreciate it, Senator.

Senator **Thurmond**. Well, it is nice to be nice to a nice fellow. [Laughter.]

Senator **Kohl**. Thank you.

Well, Judge Spatt, we would like to swear you in. Judge Spatt, do you swear that the testimony you shall give in this proceeding shall be the truth, the whole truth, and nothing but the truth, so help you God?

Judge **Spatt**. I so swear, sir.

Senator **Kohl**. If there are any members of your family here, Judge Spatt, would you like to introduce them?

TESTIMONY OF HON. ARTHUR D. SPATT, HEWLETT, NEW YORK, TO BE U.S. DISTRICT JUDGE FOR THE EASTERN DISTRICT OF NEW YORK

Judge **Spatt**. My pleasure, Mr. Chairman. I have my wife in the front row, two of my youngest daughters. I have five daughters; the youngest ones are—Sara is here and Celia here.

In back of them I have, in this order, my personal secretary from my chambers in Mineola, New York, Ruth Perlman; and on the outside, my great law secretary, who I am trying to induce, if I should be fortunate enough to be confirmed, to come with me, Karen Weiss; and her sister, a civil servant, as we all are, in the city of Washington, Diane Weigel.

Thank you for giving me that opportunity.

Senator **Kohl**. Welcome; glad to have you all here.

Judge Spatt, would you like to take a few minutes to tell us about your career, starting from when you graduated law school, what you have done, what your experiences have been, what brings you here today?

Judge **Spatt**. From the time I got out of law school, I wanted to be a trial lawyer. I loved the courtroom, the preparation, the excitement, the drama of a jury trial, and that is what I did all of my career. I was of counsel to many, many law firms, trial counsel, tried all kinds of cases and enjoyed every minute of it.

And I began to believe that the epitome, the height of success or what I wanted in the law was not just to keep trying cases, but to do something in the public good, and that was to go on the bench. And as Senator D'Amato alluded to, it was very difficult.

I tried to get on the Federal bench in 1977 because my first dream was to become a Federal district judge, an article III constitutional judge. It is a tremendous dream. Unfortunately, I was not able to be nominated to the Federal bench and I chose the elective route, and after four tries, Mr. Chairman, I was elected to the State Supreme Court, which is the main trial court in New York State. Even though the name "Supreme" is there, it is the main trial court.

And I tried cases for 4 years as a trial judge, and then the chief judge was gracious enough to appoint me as the administrative judge of Nassau County, where I was in charge of the courts, but I never gave up trying cases. I always had my own calendar even during the time I was administrative judge. I guess that was the fun of being a judge, in addition to the gratification

And then Governor Cuomo saw fit to appoint me to the appellate division. Now, the appellate division is the intermediate appellate court in the State of New York. Our highest court is called the court of appeals. The court of appeals is a certiorari court, the same as the U.S. Supreme Court. They take very few cases, so that 95 percent of all the appeals from civil and criminal trials in New York State is decided by the court that I presently am a judge, and that is the appellate division. The court of appeals only takes cases by certiorari, very few.

And it is a very significant, important court that I am on. It has given me a chance to look at the law and to see what other judges do in their trials, and it has been a wonderful experience.

But when Senator D'Amato called me and offered me the opportunity to appear before his screening committee, that again brought back to me the lifelong dream that I had of going on the Federal bench. It is a unique judicial position, no matter what I have had and still have. The Federal bench is a unique judicial position, and that brought us to where I am now.

And I wanted to specifically thank the Chairman and Senator Thurmond for waiving the rules, according to the statement the Chairman made initiating this hearing, and trying to get the people of the State of New York, Colorado and Idaho district judges, which they desperately need, desperately need.

So I am just very privileged and honored, Mr. Chairman, to be here. I just can't believe it sometimes, but I am privileged and honored to be here.

Senator KOHL. That is a great statement. I would like to ask you a follow-up question on that, Judge Spatt. Moving from the State court system to the Federal bench, how do you perceive that sort of a transition and any changes it will have on you in terms of how you handle your job?

Judge SPATT. Two words, hard work, which I have really never been afraid of. I tried a lot of cases in the Federal court to conclusion when I was a lawyer, and we have in the Federal court diversity cases. Probably, in New York, about one-third of our cases are diversity cases, which are regular State court cases, but because they involve citizens of different States, they land in the Federal court. They have the same cases that I have had on a daily basis.

As far as the other cases, there will be some areas in security law, patent and copyright, that will not be familiar to me, but as in every other case, I will study them, work hard, and learn the law, and learn to get comfortable with the law. So I don't expect any problem at all that a little hard work won't handle.

Senator KOHL. OK. Another question, Judge Spatt: several of the cases you have presided over have dealt with the controversial issue of drug testing. In one case, you upheld the constitutionality of drug testing for persons applying for jobs as conductors with the New York City Transit Authority.

In another case, you were part of a panel that struck down mandatory drug testing of teachers. The court reasoned that to compel teachers to undergo such tests without a reasonable suspicion that they were drug users was an unconstitutional invasion of their privacy.

So what I would like to ask you is this. I am sure you would agree that the courts will be hearing many more cases like these in the years to come. Without indicating how you would rule in any case that might come before you, can you describe some of the factors that courts should consider in determining what limitations should be placed on drug or alcohol testing?

Judge SPATT. I can tell you that——

Senator THURMOND. May I interrupt just a minute? I have got to go to another meeting for a few minutes and I will be back as soon as I can.

Senator KOHL. If you have a question or a comment, go ahead, Senator Thurmond.

Senator THURMOND. I have a couple of questions, if you wouldn't mind asking those for me. I will try to get back for the next witness after this.

Judge SPATT. Thank you very much, Senator.

Senator KOHL. Thank you, Senator Thurmond.

Senator THURMOND. I wish you success and happiness on the bench.

Judge SPATT. Thank you, Senator.

Well, in New York State, I can only go by New York State and as the Supreme Court has ruled on it. Where there is random drug testing in a non-dangerous occupation where you are not going to risk the public, reasonable suspicion is required because a drug test is an invasion. It is a search and seizure, minimal intrusion, but a search and seizure. So, therefore, you have to have reasonable suspicion.

And in the *Patchougue Medford* case, which you referred to—that is the case which I was on in which we struck the drug test—they said to the teachers, for no reason, we want you to take tests—no suspicion, no complaints, nobody has—there was no evidence of anybody taking drugs. And in that kind of a profession, we decided that that was too much of an intrusion.

Now, take the test on the Transit Authority conductors. There, they were applying for a job and in the application it said do you take drugs; warning, we reserve the right to test. So when the applicant comes in and signs his application, he is consenting—he or she; in this case, it was a woman, also; two men and a woman. And we felt that it was a reasonable protection for the residents of the

State of New York and the city of New York in the subway system where the conductors open and close doors, where hundreds and thousands of people mill in and out of those subway trains—that that was—and they were put on notice, so therefore we held it was valid; two different situations.

Senator KOHL. Do you have some idea as to where you think the constitutional line should be drawn? Any comment on that?

Judge SPATT. The Constitution is the most perfect document that has ever been conceived by human beings, in my opinion, and the proof is it has only been amended, I forget how many times, but very few times—30 times, less than 30 times.

Senator KOHL. Less than 30.

Judge SPATT. I believe that it was the product of the most far-seeing people that we were fortunate—I don't know how we got them all together in one place, and I believe the Constitution covers most of the situations. And what it doesn't cover, the cases that have interpreted the Constitution by the U.S. Supreme Court and the U.S. Court of Appeals are what I will go by.

I, if I am fortunate enough to be confirmed, will be a U.S. District Judge, a trial judge. I will follow the precedents of the Supreme Court and the court of appeals. I must do it, and it is the proper thing to do.

Senator KOHL. I would like to ask you a question that may borrow on one from Senator Thurmond. He asks the question, "The phrase 'judicial activism' is often used to describe the tendency of judges to make decisions on issues that are not properly within the scope of their authority. What does the phrase 'judicial activism' mean to you?"

Judge SPATT. Well, I think that Senator Thurmond's definition is what the commonly accepted, but not much admitted, definition is. It is that some judges use a particular set of facts in a case to enact broader concepts than what is required in the case, sweeping doctrines. I do not believe in that. I am opposed to that, and I think that a judge should render a decision based on the facts and law of that particular case, and no further.

Senator KOHL. All right. One follow-up on that from Senator Thurmond: are there ever any circumstances under which a judge should attempt to establish new judicial precedent, and if so, what criteria would you consider in order to determine the propriety of reversing existing precedent?

Judge SPATT. As a district court judge, on the same set of facts, I would never reverse existing precedents. If I have a precedent by the U.S. Supreme Court or the court of appeals on the same set of facts, I must follow it. If, however, there is a different set of facts and that different set of facts has no precedent, there has never been a decision rendered—for example, I wrote an opinion in the case involving stipulating to an element in a criminal case. This happened to be an assault in the first degree, a State violent crime case.

One of the elements is serious physical injury; you hurt somebody with serious physical injury. If it is physical injury, not serious, it is assault in the second degree. Now, the defense said they would stipulate that this was serious physical injury, so as to preclude evidence by the doctors of the terrible injuries that were inflicted on this person. And the prosecutor said, no, I won't accept the stipulation; I think the jury should hear this evidence as to what really happened.

And the point at issue never before—I am just taking this at random—never before decided in our State was, Is the prosecution compelled to accept a stipulation in a criminal case? And my bench ruled—I wrote the opinion—that we are not—that the people are not compelled to accept the stipulation, and have the right to put the proof before the jury. Now, that case never had any precedent, so there we set the precedent, and that is the only time we will do it is where there is no precedent.

Senator KOHL. That is a good answer. I think that Senator Thurmond would appreciate that very much, and myself, too.

Do you have any comments you would like to make? I think you have done a real good job here today.

Judge SPATT. I am just very happy, and not only honored, but pleased that the committee has chosen to waive that rule, which shows their tremendous desire to put judges on the bench so that the people of this country will be served, and I think that is a wonderful gesture on the part of the committee.

Senator KOHL. OK, Judge Spatt, we appreciate having you, and hope to process your application as soon as possible.

Judge SPATT. Thank you very much.

Senator KOHL. Mr. Nottingham. Would you like to introduce your family, Mr. Nottingham?

Mr. NOTTINGHAM. Thank you, Mr. Chairman. My family is seated in the second row on the committee's right: my wife, Janis Chapman; my son, Willis Nottingham; and my daughter, Amelia Nottingham.

Senator KOHL. We are very happy to have you here with us today, folks. It is nice to have you in Washington.

Mr. Nottingham, would you like to be sworn in, please? Do you swear that the testimony you shall give in this proceeding shall be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. NOTTINGHAM. I do.

Senator KOHL. Mr. Nottingham, why don't you tell us a little about your career since you have graduated from college, the things you have done, the positions you have held, and what brings you here today?

TESTIMONY OF EDWARD W. NOTTINGHAM, GRAND JUNCTION, CO, TO BE U.S. DISTRICT JUDGE FOR THE DISTRICT OF COLORADO

Mr. NOTTINGHAM. My career started, Mr. Chairman, when I clerked for a Federal judge in Colorado, Alfred Arraj, and I think it was probably during the year that I worked for Judge Arraj that I formed the germ of the view that I would someday like to be a Federal judge because of the way Judge Arraj discharged and continues to discharge his responsibilities.

After clerking for Judge Arraj, I, as Senator Armstrong mentioned, went to one of the large Denver law firms. I was there for a period of 3 years. I interrupted my service there to go to the U.S. Attorney's Office where I was an Assistant U.S. Attorney for 2 years, prosecuting drug cases the first year, and prosecuting white collar economic criminal cases the second year.

I returned to Sherman and Howard in 1978. I became a partner in 1980. I was a partner there from 1980 to 1987, and in 1987 I left Sherman and Howard to return to the place I graduated from high school; that is, Grand Junction, CO. I have a very small practice over there representing individual clients, ranchers, smaller clients, and that is where I am today.

Senator KOHL. Might I ask what were the general reasons why you would exchange a life in Denver comprising one kind of a lifestyle and a professional practice of one sort for a life in Grand Junction, which is different—better or worse, but different? What were some of the thoughts that went through your mind?

Mr. NOTTINGHAM. I think I may have been at that stage in my life which some of us go through from time to time that it was time for a change. I was a little bit tired of being in a large firm. I was a little bit tired of being in a large city.

And Grand Junction, as the Chair may know, is a town of about 80,000, in that area, and it is a nice place to live. I am 5 minutes from work, can eat lunch at home. Those sorts of advantages are things that I will miss returning to Denver, but Denver has nice things about it, too.

Senator KOHL. OK. Throughout your career as a private practitioner and as an Assistant U.S. Attorney, you have been an advocate. During that time, you have vigorously represented the interests of your clients. However, a judge has a very different function from an advocate. He or she must balance the arguments and the equities on both sides in every case.

How do you perceive the transition and any changes and difficulties they may pose for you?

Mr. NOTTINGHAM. I hope it will be a smooth transition, Mr. Chairman. I am one of those advocates who maybe is—maybe it is a weakness in an advocate, but a strength in a judge that I have always been able to see both sides of most issues that I am advocating.

I think most good advocates can see both sides of the issue, and they just have this ability to very strenuously take one side. And in a way, temperamentally, I think I am more comfortable with being a judge, or hope to be more comfortable being a judge than I have been being an advocate. It is more in my nature, I believe, and for that reason I think the transition will be a smooth one.

Senator KOHL. Mr. Nottingham, some members of this committee believe that membership in certain types of all-male clubs should be a bar to confirmation. In fact, club membership and former club membership now is to be a standard part, as you probably know, of the confirmation process.

My question is, What do you think of this issue? Should membership in an all-male club disqualify a candidate from the Federal bench? How about membership in a women's club?

Mr. NOTTINGHAM. Mr. Chairman, it is my understanding of the Code of Judicial Ethics that it is improper to be a member of a club that invidiously discriminates on certain bases, and therefore I have no problem with the committee taking the view that if you are going to be a judge, you ought to be prepared to follow the Code of Judicial Ethics.

Senator KOHL. Well, let me ask you this question. In your own questionnaire, you indicated to us that you have been a member of the Denver Law Club since 1978, but that the club did not admit women until the early 1980's. And I understand that you consistently urged the club to change its rules and admit women.

What kind of an effort did it take to admit women attorneys to the Denver Law Club, and how were you involved in getting the club to change its rules?

Mr. NOTTINGHAM. It really didn't take much of an effort, Senator. I think we were at a stage in the club's existence where it was ripe to have women admitted. I have never had a leadership role in the Law Club of Denver. I have never been an officer; I have always been a member.

And my role was simply to advocate that women be admitted and to speak on behalf of the admission of women on, I think, the two or three occasions before it finally happened. And then, as you said, in early 1981—1982, I believe, is when it finally occurred.

Senator KOHL. And when you joined the club in 1978, you were aware of the fact that it was an all-male club?

Mr. NOTTINGHAM. I was.

Senator KOHL. And you had some thoughts about that, or what?

Mr. NOTTINGHAM. I did have some thoughts about that. The club is regarded as a somewhat prestigious club, and its purpose, I should add, is, although it is the law club, it puts on an annual review. It is really an acting club and a singing club more than anything else. It puts on an annual acting-singing parade at the Colorado Bar Association convention.

I thought about it. There were, at the time, many Federal judges who were either former or present members of the club, many prominent members of the Denver bar. And my decision was to join it and try to get the rules changed.

Senator KOHL. OK. Mr. Nottingham, you have been active in the Colorado Bar Association's Ethics Committee, and you authored its formal opinion dealing with situations where two spouses represent adverse parties. My question is, What ethical questions arise when spouses or their law firms represent adverse parties, and how should these questions be resolved?

Mr. NOTTINGHAM. The ethical questions that arise fall into three general categories, Mr. Chairman. One is the ethical requirement that lawyers keep confidences and secrets of their respective clients. The second is that lawyers avoid conflicts of interest, and the third is that lawyers avoid the appearance of impropriety.

The spousal relationship, because it is a close relationship where confidences may be shared, where you talk over the daily business that you are both engaged in, provides some opportunity for potential breaches of those canons, of those ethical rules.

And the whole purpose of opinion 75, which, as you undoubtedly know, is a very lengthy opinion, is to try to balance those things against one another and to articulate the situations where spouses can continue or where spouses' law firms or organizations can continue to be involved in the same litigation on an ethical basis.

And I might add I am sensitive to that because I forgot to say so when I was introducing her, but my wife, Janis, is a lawyer, and a very good lawyer.

Senator KOHL. Well, that is nice information to know. Thank you.

From Senator Thurmond: how would you handle an instance in which counsel for one of the parties in your court was obviously not a skilled litigator and was not prepared to adequately represent the interests of the client?

Mr. NOTTINGHAM. Recognizing that there are two sides to that issue and that you can arguably support either one, my own particular view is that I have an obligation in the courtroom to do justice and to see that the truth comes out. And if that, from time to time, requires that I try to compensate for the weakness of a pro se plaintiff, one who has no lawyer, or try to compensate for the weakness of a lawyer to make sure that justice is done, I don't believe I would hesitate to do so.

Senator KOHL. You would not hesitate to do so?

Mr. NOTTINGHAM. That is correct, Mr. Chairman.

Senator KOHL. One other question: every lawyer has a professional obligation to devote part of his time to serving the disadvantaged. I noticed in your resume that you have done quite a lot of pro bono work, so obviously you fulfill this obligation.

How important, in your judgment, is pro bono work, and how could the bar encourage other lawyers to be as responsible as you have been with respect to pro bono?

Mr. NOTTINGHAM. Well, it is of great importance not only because the Code of Professional Responsibility requires it, but I think in the situation we find ourselves today, it is critically important that people who cannot afford lawyers are represented by lawyers.

I think what the bar can do to encourage that, other than through organized bar organizations, is to give young lawyers credit—if you are in a private firm, to give some sort of a credit, equal credit for pro bono work as you get for client work, and that is being done in the large firms.

The Denver Bar Association has a very fine program called the Thursday Night Bar, which is a pro bono divorce case program where each lawyer, each participating lawyer devotes one night a week to being in the—or to taking divorce cases, domestic cases, or answering questions about domestic cases.

So that sort of program, I think, is something that the private bar and the bar associations can undertake.

Senator KOHL. Thank you.

Senator Thurmond, do you have any questions?

Senator THURMOND. Thank you, Mr. Chairman.

Mr. Nottingham, you have been in private practice now since you were an Assistant U.S. Attorney, I believe, so you have had considerable experience. One thing I think a judge ought to keep in mind, and that is to exercise judicial temperament in the proper manner.

I have seen some Federal judges yell at attorneys, witnesses, and so forth, and that is inexcusable. Do you think you can exercise the temperament that would be fair and courteous to people at all times?

Mr. NOTTINGHAM. That would be my intent, Senator. I might say I feel like, as an attorney—and I have never been a judge—that I have been on the receiving end of a number of those tirades from time to time, and I feel the sting of those as nobody else can. So I certainly agree with you, and I hope that I would be the kind of judge that——

Senator THURMOND. The other thing is judicial activism. There have been some judges who have taken over hospitals, schools and prisons, State institutions. In a couple of cases I have heard about, they have tried to levy a tax, a tax to make the subdivision of the State do something they didn't want to do. The judge was going to do it anyway.

We have three departments of the Government: the Congress that makes the law, the executive branch that executes the law, the judicial branch that interprets the law. Your job will be to interpret the law.

Mr. NOTTINGHAM. I understand that, Senator Thurmond.

Senator THURMOND. Do you think you can follow that?

Mr. NOTTINGHAM. I am confident that I can.

Senator THURMOND. I have no other questions. I wish you well on the bench, and I think you are well qualified.

Mr. NOTTINGHAM. Thank you, Senator.

Senator KOHL. Thank you, Senator Thurmond. Thank you, Mr. Nottingham. We appreciate your being here today, and your family.

Mr. NOTTINGHAM. Thank you.

Senator KOHL. Judge Lodge. I would like to swear you in, Judge Lodge. Do you swear that the testimony you shall give in this proceeding shall be the truth, the whole truth, and nothing but the truth, so help you God?

Judge LODGE. I do.

Senator KOHL. Thank you. We have already had the pleasure of meeting members of your family. We very much appreciate the fact that you have all taken the time to be here today. It is a very happy day. It is nice to see the smiles on your faces.

Judge Lodge, why don't you begin by telling us a little bit about your career, what you have done, what brings you here today?

TESTIMONY OF HON. EDWARD J. LODGE, CALDWELL, ID, TO BE U.S. DISTRICT JUDGE FOR THE DISTRICT OF IDAHO

Judge LODGE. Mr. Chairman, I graduated from the University of Idaho Law School in 1961. I went into private practice, and then due to an unfortunate death in the probate court, I was appointed to that bench, with the idea of going in and learning something about the probate law and then going back into the private practice.

However, I have never left the judicial ranks because, in effect, I think it is somewhat of a calling. I enjoyed that aspect of my career very much. For 2 years—in 1963, I was appointed district judge for the State of Idaho, the youngest judge ever appointed in Idaho. I was in that position until January 1988. In January 1988, I was appointed a U.S. bankruptcy judge, and I have served in that capacity since.

Senator KOHL. Judge Lodge, increasingly, many judges have taken a more active role in encouraging settlements, and you have been one of them. Question: What do you think is the proper role of a judge in encouraging settlements? Is it sometimes appropriate for the judge to twist a litigant's arm?

Judge LODGE. We are living in a litigious society, and there are a number of cases before the courts, so I think the court does have a responsibility to encourage settlements where they are appropriate. I don't think the judge should ever try to take the case away from the parties, but there are ways that the court can be of help both to the lawyers and to the litigants because of the experience you have.

And I think that it is important that in complex litigation, particularly, that you get yourself involved early on so that you are familiar with the issues. You can give some direction because of your experience, hopefully, in that area.

There are a number of new techniques that judges are being trained in in recent years that involve such things as mini-trials, use of masters, and a number of things that can narrow the issues down and help the parties themselves resolve the controversy.

Senator KOHL. Judge Lodge, one of your murder cases generated some publicity. As I understand it, a sheriff presented you with a plaque that featured the gun that had been used in the crime as sort of a trophy. And shortly after, questions were raised about whether it was appropriate for you to accept the gift. Could you describe what happened in that incident?

Judge LODGE. Certainly, Mr. Chairman, and I appreciate the question. The gun, of course, was not a gun used in the trial, it was not evidence. It was contraband. I did not receive that gun as a gift.

I had gone to Owyhee County, which is a little western community, on a regular motion day. At the conclusion of that motion day, in the presence of a number of parties, this gun was presented to me on the plaque, as you have indicated.

The first thing that came to my mind was that I cannot receive that as a gift, and I can clearly recall the sheriff's words, "Well, I know that judge. I am not giving it to you as a gift because we do have to have this gun back when it is determined who, if anyone, owned this gun."

The gun was always identified and marked as evidence belonging to the sheriff of Owyhee County. It was returned when that decision was made. But I made it extremely clear that I was not receiving that gun as a gift.

Senator KOHL. OK. One other question: Every lawyer has a professional obligation to devote part of his time to serving the disadvantaged. As a judge for over 25 years, you were not able to represent clients, but you have worked with bar associations to set up pro bono and legal aid services for the poor.

In your opinion, how important is it that lawyers do pro bono work, and how can we encourage attorneys to do more of it?

Judge LODGE. Pro bono work, of course, is extremely important, Mr. Chairman. I think having been on the bench the number of years that I have been, I have seen many instances where somebody did attempt to represent themselves pro se. I don't feel that they can adequately represent themselves in most instances, and so it makes the situation much easier for the judge to remain neutral and to decide the cast on its merits when you do not have to inject yourself into the trial itself.

When attorneys are there, they represent the clients, and you can stand back and do your job as a judge. So I am very much encouraged by the pro bono work that has been done. I was instrumental in the formation of some pro bono panels in Idaho, and I think it has been working very satisfactorily.

Senator KOHL. Thank you.

Senator Thurmond.

Senator THURMOND. Judge, you have served as a probate judge and a district judge. Is the district court out there the highest trial court?

Judge LODGE. Yes. The district court is the court of general jurisdiction.

Senator THURMOND. What is the term of office?

Judge LODGE. We are elected every 4 years as a——

Senator THURMOND. Elected by the people?

Judge LODGE. By the people.

Senator THURMOND. Do you serve in one district or do you rotate over the State?

Judge LODGE. The districts are made up of varying counties. We do have jurisdiction throughout the State, but as a rule we serve within our own district, and in my district with six counties.

Senator THURMOND. I was a circuit judge one time myself and I had a circuit, but in the spring and the fall terms we would rotate among other circuits and we would cover the whole State in about 6½ years.

Now, you are now a bankruptcy judge?

Judge LODGE. That is correct.

Senator THURMOND. Do you like that better than being a district judge?

Judge LODGE. No. It has been a valuable experience because bankruptcy issues, of course, are appealed to the Federal district court, and I think I have expanded my knowledge in that particular area. I love the trial court and I like——

Senator THURMOND. We finally got the bankruptcy judges some retirement they didn't have before. I don't know whether that might induce you to stay on longer. [Laughter.]

But you decided you would rather be a U.S. district judge.

Judge LODGE. I would.

Senator THURMOND. Of course, I think anybody would, probably.

Well, you have a good reputation from all I have heard about you, and you heard what I said about judicial temperament. I guess you would agree that a judge ought to always be courteous and thoughtful to people, and not throw his power around and try to be arrogant.

Judge LODGE. Extremely important.

Senator THURMOND. Did you hear what I said about judicial activism?

Judge LODGE. I did.

Senator THURMOND. Federal judges have all the power in the world, but they ought not to try to take over State institutions and run them. Do you agree with that?

Judge LODGE. I certainly do, Senator. I believe that the trial court should stay on the issues that are in the particular case in front of it, and they are not problem-solvers. They decide disputes between parties.

Senator THURMOND. I wasn't here when your family was introduced. Is this your family sitting back here?

Judge LODGE. Yes, it is, Senator. This is my wife, Patty Anne, and my daughter, Mary Genet. Mary Genet surprised me, Senator, by flying in last night from the University of San Diego. She wanted to put a little additional pressure on me.

Senator THURMOND. She is in college out in San Diego?

Judge LODGE. That is correct.

My son, Edward Ryan; he is the student body president of his school, and Anne Marie.

Senator THURMOND. You have two daughters and a son?

Judge LODGE. I believe in equal protection.

Senator THURMOND. That is a fine-looking family. I think if I didn't know you, I would vote for you anyway on account of your family. [Laughter.]

Thank you very much.

Senator KOHL. Thank you, Senator Thurmond.

Thank you, judge, and all your family, for being here today.

Judge LODGE. Thank you very much, Mr. Chairman.

Senator KOHL. We will attempt to expedite your nomination.

Judge LODGE. Thank you very much.

Senator KOHL. Thank you very much.

[Whereupon, at 3:00 p.m., the committee was adjourned.]

THE ASSOCIATION OF THE BAR
OF THE CITY OF NEW YORK
42 WEST 44TH STREET
NEW YORK 10036-6690

COMMITTEE ON THE JUDICIARY

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November 10, 1989

Hon. Joseph R. Biden, Jr.
United States Senate
489 Russell Senate Office Building
Washington, D.C. 20510

Dear Senator Biden:

I am pleased to inform you that the Committee on the Judiciary of the Association of the Bar of the City of New York has found Arthur D. Spatt APPROVED for appointment as United States District Judge for the Eastern District of New York.

Very truly yours,

Robert L Haig

RLH:gs

ARTHUR D. SPATT

Birth:	December 13, 1925	Brooklyn, New York
Legal Residence:	New York	
Marital Status:	Married	Dorothy G. Warmbrand 5 children
Education:	1943 - 1944 1946 - 1947	Ohio State University
	1947 - 1949	Brooklyn Law School LL.B. degree, cum laude
Bar:	1950	New York
Military Service:	1944 - 1946	United States Navy
Experience:	1949	Davidson & Davidson Pre-Admission Associate
	1950	Lane, Winard, Robinson & Schorr Associate
	1951 - 1952	Alfred S. Julien, Esq. Associate
	1953 - 1967	Arthur D. Spatt, Esq.
	1967 - 1973	Spatt & Bauman Partner
	1973 - 1974	Spatt, Bauman & Wilkins Partner
	1975 - 1978	Spatt & Bauman, P.C.
	1979 - present	Justice of the Supreme Court of the State of New York
	1982 - 1986	Adminstrative Judge of Nassau County
	1986 - present	Associate Justice Appellate Division Second Judicial Department State of New York
Office:	100 Supreme Court Drive Mineola, New York 11501 516 535-2373	45 Monroe Place Brooklyn, NY 11201 718 875-1300
Home:	168 Torquay Place Hewlett, New York 11557	

To be United States District Judge for the Eastern District of New York

United States Senate Committee on the Judiciary

QUESTIONNAIRE FOR JUDICIAL NOMINEES

I. BIOGRAPHICAL INFORMATION (PUBLIC)

1. Full name (include any former names used.)

ARTHUR DONALD SPATT (Until I entered the Navy, I thought my name was Arthur David Spatt.)

2. Address: List current place of residence and office address(es).

Place of residence:
168 Torquay Place
Hewlett, New York 11557

Office addresses:
Supreme Court Chambers
100 Supreme Court Drive
Mineola, New York 11501

Appellate Division, Second Department
45 Monroe Place
Brooklyn, New York 11201

3. Date and place of birth.

December 13, 1925 -- Brooklyn, New York

4. Marital Status (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es).

I am married to the former Dorothy Golda Warmbrand, now a homemaker, formerly a guidance counselor employed by the Board of Education of the City of New York, 110 Livingston Street, Brooklyn, New York.

5. Education: List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.

Ohio State University -- September 1943 to January 1944; June 1946 to June 1947 -- I received no degree because I took a two-year course for a Law Students Qualifying Certificate which, at that time, enabled an undergraduate student to attend law school.

Brooklyn Law School -- June 1947 to May 1949; LLB cum laude in May 1949

6. Employment Record: List (by year) all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including firms, with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.

1949 -- Davidson & Davidson, Esqs., 40 Wall Street, New York, NY -- pre-admission associate attorney

1950 -- Lane, Winard, Robinson & Schorr, Esqs., 67 W. 44th Street, New York, NY -- associate attorney

1951-1952 -- Alfred S. Julien, Esq., 15 Park Row, New York, NY -- associate attorney

1953 -- Florea & Florea, Esqs., 295 Madison Avenue, New York, NY -- associate attorney

1953-1967 -- Arthur D. Spatt, Esq., 295 Madison Avenue, New York, NY -- owner

1967-1973 -- Spatt & Bauman, Esqs., (to 1970) 295 Madison Avenue, New York, NY -- senior partner

1973-1974 -- Spatt, Bauman & Wilkins, Esqs., 225 West 34th Street, New York, NY -- senior partner

1975-1978 -- Spatt & Bauman, P.C., 225 West 34th Street, New York, NY -- senior partner, officer and director and sole stockholder of professional corporation.

7. Military Service: Have you had any military service? If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received.

a) New York Guard; December 23, 1942 to October 5, 1943; Corporal; honorable discharge

b) United States Navy; April 5, 1944 to May 26, 1946; Quartermaster Second Class; serial no. 908-29-80; honorable discharge

8. Honors and Awards: List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.

Brooklyn Law School LLB cum laude
Recipient of Honor Key
Brooklyn Law Review -- member and Book Review Editor

Awards from Bar Association of Nassau County; New York State Trial Lawyers Association; Jewish Lawyers of Nassau County; Long Beach Lawyers Association; and St. John's University School of Law Alumni Association.

9. Bar Associations. List all bar associations, legal or judicial-related committees or conferences of which you are or have been a member and give the titles and dates of any offices which you have held in such groups.

Association of Supreme Court Justices of the State of New York; former Chairperson, Committee on Judicial Conduct 1982 to 1987

American Bar Association; National Conference of Trial Judges, Bedford Park, Illinois

New York State Bar Association, Albany, New York

Bar Association of Nassau County, Mineola, New York

Association of the Bar of the City of New York, New York, New York

American Trial Lawyers Association, Washington, D.C.

New York State Trial Lawyers Association; member of Board of Directors 1972 to 1978, New York, New York

Jewish Lawyers Association of Nassau County, address at President's office (President Isaac Blachor, 400 Garden City Plaza, Garden City, New York 11530)

Brooklyn Law Review Association, Brooklyn, New York

Federal Bar Association of New York, New Jersey and Connecticut, New York, New York 10005

Supreme Court Justices Association of the City of New York, Inc., c/o Hon. Joseph J. Kunzeman, President, 88-11 Sutphin Boulevard, Jamaica, New York 11435

Long Beach Lawyers Association, address at President's office (president Samuel Ungar, Kennedy Plaza, Long Beach, New York 11561)

Brooklyn Law School Alumni Association, 250 Joralemon Street, Brooklyn, New York 11201

Brooklyn Bar Association, former member, Brooklyn, New York

Nassau-Suffolk Trial Lawyers Association, former member

Theodore Roosevelt American Inn of Court, Master of the Bench, Uniondale, New York

10. Other Memberships: List all organizations to which you belong that are active in lobbying before public bodies. Please list all other organizations to which you belong.

I do not know if any of the organizations to which I belong are active in lobbying before public bodies except that I read that the Jewish War Veterans occasionally visit Washington to support legislation affecting veterans' issues.

Hewlett-East Rockaway Jewish Centre -- Board of Directors

South Nassau Communities Hospital -- Board of Directors

Jewish War Veterans

Temple Gates of Zion -- Men's Club

Kiwanis -- Peninsula Chapter

South Shore Lodge & Scottish Rites -- Masons

Williamsburgh YMHA and YWHA -- former member of Board of Directors

B'nai B'rith of North Woodmere

Alpha Epsilon Pi

Nassau County Task Force for Aging -- former member and Founder

Five Towns Martin Luther King Foundation -- former member and Founder

11. Court Admission: List all courts in which you have been admitted to practice, with dates of admission and lapses if any such memberships lapsed. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.

New York State -- Second Judicial Department -- January 25, 1950

U. S. District Court, Southern District -- September 6, 1955

U. S. District Court, Eastern District -- December 27, 1955

U. S. Second Circuit Court of Appeals -- 1975

12. Published Writings: List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited. Please supply one copy of all published material not readily available to the Committee. Also, please supply a copy of all speeches by you on issues involving constitutional law or legal policy. If there were press reports about the speech, and they are readily available to you, please supply them.

None, except I wrote a Law Review Note which appeared in the Brooklyn Law Review, a copy of which is annexed and marked "Exhibit "A". I also wrote an article on evidence which appeared in the New York Law Journal and the Nassau Lawyer (publication of the Bar Association of Nassau County) about five years ago, which I cannot locate at this time.

13. Health: What is the present state of your health? List the date of your last physical examination.

The present state of my health is excellent. On August 4, 1989, I was given a complete examination and on August 16, 1989, I underwent an audiological evaluation in order to complete the required medical form.

14. Judicial Office: State (chronologically) any judicial offices you have held, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

November 1978 -- In my first judicial position, I was elected a Justice of the Supreme Court of the State of New York, Tenth Judicial District. I served in that position commencing January 1, 1979, in Supreme Court, Nassau County (Mineola), Suffolk County (Riverhead and Hauppauge) and Queens County (Kew Gardens) in trial and special term capacities. The Supreme Court of the State of New York is the major trial court in the state, having unlimited civil and criminal jurisdiction.

In December 1982, while remaining a State Supreme Court Justice, I was appointed Administrative Judge of Nassau County. The Administrative Judge is the judicial officer in charge of all the courts and court personnel in Nassau County.

On February 4, 1986, I was appointed by Governor Cuomo as an Associate Justice of the Appellate Division, Second Judicial Department, and I am still acting in that capacity. By state constitution, Appellate Division Justices are appointed only from elected Supreme Court Justices. The Appellate Division has unlimited intermediate appellate jurisdiction over all appeals from major civil and criminal trials, judgments and interlocutory orders. The Court of Appeals, which is the highest appellate court in New York State, is a certiorari court and, therefore, the Appellate Division's determinations are final in more than 90% of all appeals. The Appellate Division, Second Department, is reputedly the busiest appellate court in the nation. For example, in 1988 we determined more than 4500 appeals and in excess of 10,000 motions.

15. Citations: If you are or have been a judge, provide: (1) citations for the ten most significant opinions you have written; (2) a short summary of and citations for all appellate opinions where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings; and (3) citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, please provide copies of the opinions.

1. Citations for the ten most significant opinions

a) Town of Islip v. Caviglia, et ano, 141 A.D 2d 148, 532 N.Y.S.2d 783 (2d Dept. 1988), aff'd, 73 N.Y.2d 544, 542 N.Y.S.2d 139 (1989).

b) People v McGrath, 135 A.D.2d 60, 524 N.Y.S.2d 214 (2d Dept. 1988) affirmed for reasons stated in the Appellate Division opinion, 73 N.Y.2d 826, 537 N.Y.S.2d 480 (1988).

c) Matter of Central General Hospital v Lukash, 140 A.D.2d 113, 532 N.Y.S.2d 527 (2d Dept. 1988), affirmed for reasons stated in the Appellate Division opinion, 74 N.Y.2d 619, 541 N.Y.S.2d 979 (1989).

d) Technicon Electronics Corp. v American Home Assurance Co., etc., 141 A.D.2d 124, 533 N.Y.S.2d 91 (2d Dept. 1988), aff'd, ___ N.Y.2d ___, ___ N.Y.S.2d ___ (1989) .

e) People v Tracy Hills, 140 A.D.2d 71, 532 N.Y.S.2d 269 (2d Dept. 1988).

f) Kuriansky v Bed-Stuy Health Care Corp., 135 A.D.2d 160, 525 N.Y.S.2d 225 (2d Dept. 1988), aff'd, 73 N.Y.2d 875, 538 N.Y.S.2d 233 (1988).

g) Dozier v New York City Transit Authority, 130 A.D.2d 128, 519 N.Y.S.2d 135 (2d Dept. 1987).

h) People v DiNicolantonio, 140 A.D.2d 44, 532 N.Y.S.2d 257 (2d Dept. 1988) (dissenting opinion by Spatt, J.), reversed and conviction reinstated for reasons stated in dissenting opinion ___ N.Y.2d ___, ___ N.Y.S.2d ___ (Oct. 12, 1989).

i) Matter of Lydia E. Hall Hospital v Cinque, 116 Misc.2d 477, 455 N.Y.S.2d 706 (Sup.Ct. Nassau Co. 1982) (see also, Lydia E. Hall v Cinque, 117 Misc.2d 1024, 459 N.Y.S.2d 682 (Sup.Ct. Nassau Co. 1982).

j) Heitner v Government Employees Insurance Company, 118 Misc.2d 752, 461 N.Y.S.2d 195 (Sup.Ct. Nassau Co. 1983) reversed, 103 A.D.2d 111, 479 N.Y.S.2d 51 (2d Dept. 1984), reversed, 64 N.Y.2d 834, 486 N.Y.S.2d 933 (1985).

2. A short summary of and citations for all appellate opinions where your decisions were reversed or where your judgment was affirmed with significant criticism for your substantive or procedural rulings.

As a Justice of the New York State Supreme Court (Trial Judge)

Reversals

a) Collard v Incorporated Village of Flower Hill, order reversed -- Supreme Court, Nassau County, Special Term, Part I, 75 A.D.2d 631, 427 N.Y.S.2d 301 (2d Dept. 1980), aff'd, 52 N.Y.2d 574, 439 N.Y.S.2d 326 (1981) (plaintiff moved to rezone his property. I held that the Village had the obligation of "good faith" in determining whether to consent to such alteration. The appellate courts held that the contractual doctrine of "good faith" did not, in a zoning case, give rise to an arbitrary and capricious level, as a matter of law).

b) Matter of Eagle Insurance Company v Olephant, Supreme Court, Nassau Co., Special Term, Part I, judgment reversed 81 A.D.2d 886, 439 N.Y.S.2d 159 (2d Dept. 1981) (In an uninsured motorists claim, I held that the evidence of insurance was insufficient to stay arbitration. The Appellate Division ruled that a code number on a Department of Motor Vehicles form naming one insurance company and a police report naming another insurance company was sufficient to raise issues for a hearing).

c) Island Swimming Sales, Inc. v County of Nassau, etc., Supreme Court, Nassau County, Special Term, Part I, order reversed 88 A.D.2d 990, 452 N.Y.S.2d 68 (2d Dept. 1982) (In a civil action, I ruled that the Nassau County Fire Prevention Ordinance was constitutional. The Appellate Division held that since a prior criminal information was filed charging the plaintiff with violating certain provisions of the said ordinance, the constitutional claims raised by the plaintiff should be adjudicated in the pending criminal proceeding.

d) Gordon v Continental Casualty Co., Supreme Court, Nassau County, Special Term, Part I, order reversed 91 A.D.2d 987 457 N.Y.S.2d 844 (2d Dept. 1983) (In a declaratory judgment action, I held that in an essentially equity action, the law permitted no jury trial. The Appellate Division held that the action also had money damages ramifications and that the defendant-carrier could have a jury trial).

e) The Hamlett Development Co. v Venitt, Supreme Court, Nassau County, Special Term, Part I, order reversed 95 A.D.2d 798, 463 N.Y.S.2d 514 (2d Dept. 1983) (Libel action -- I denied the motion by the defendant for summary judgment. The Appellate Division ruled that the statements at issue related solely to the quality of goods and services received and were not actionable.)

f) County of Nassau v Adjunct Faculty Association of Nassau Community College, Supreme Court, Nassau County, Special Term, Part 2, oral decision; judgment reversed 100 A.D.2d 924, ___ N.Y.S.2d ___ (2d Dept. 1984) (the Appellate Division ruled that a stipulation was interpreted incorrectly in a labor dispute and that, therefore, contempt should not lie).

g) Matter of Statewide Insurance Company v Libecci, Supreme Court, Nassau County, Special Term, Part 5, oral decision; judgment reversed 104 A.D.2d 893, 480 N.Y.S.2d 510 (2d dept. 1984) (in an uninsured motorist arbitration, the Appellate Division reversed my determination that the offending vehicle was not insured at the time of the accident).

Modifications

a) Stern v Stern, Supreme Court, Nassau County, Special Term, Part I; order modified as to one cause of action as to repairs expended, 80 A.D.2d 850 (2d Dept. 1981).

b) O'Connor v Lempicky, Supreme Court, Nassau County, Special Term, Part 5; judgment modified only as to punitive damages (I had awarded both compensatory and punitive damages), 81 A.D.2d 860, 438 N.Y.S.2d 868 (2d Dept. 1981).

c) Sancetta v Notey, Supreme Court, Nassau County, Special Term, Part I, order granting partial summary judgment modified only to grant disclosure as to one issue, 86 A.D.2d 604, 446 N.Y.S.2d 114 (2d Dept. 1982).

d) Breen v Breen, Supreme Court, Nassau County, Special Term, Part 5; judgment modified to correct amount of arrears, ___ A.D.2d ___, 454 N.Y.S.2d 1022 (2d Dept. 1982)

Reversal Based on Material Disclosed Only on Appeal

Cerbone v Union Free School District #17, Supreme Court, Nassau County, Special Term, Part I, written opinion annexed; judgment reversed 80 A.D.2d 573, 435 N.Y.S.2d 791 (2d Dept. 1981) (I granted motion to dismiss a civil suit for failure to prosecute because I was not informed of certain procedural steps that had been taken. The Appellate Division stated that "we find that counsel for both sides were seriously at fault for failing to disclose to the court material facts having a significant bearing on the merits of the motion to dismiss").

Cases in which judgments rendered by me
were reversed by the Appellate Division
and reinstated by the Court of Appeals

a) Nassau Chapter of the Civil Service Employees Association, Inc. v County of Nassau, 101 Misc.2d 328, 420 N.Y.S.2d 974 (Sup.Ct. Nassau Co. 1979) rev'd, 77 A.D.2d 616, 430 N.Y.S.2d 365 (2d Dept. 1980) rev'd, 53 N.Y.2d 559, 444 N.Y.S.2d 432 (1981).

b) Cramer v County of Nassau, Supreme Court, Nassau County, Special Term, Part 5E, rev'd, 77 A.D.2d 610, 430 N.Y.S.2d 633 (2d Dept. 1980) rev'd, 54 N.Y.2d 927, 445 N.Y.S.2d 136 (1981).

c) Heitner v Government Employees Ins. Co., 461 N.Y.S.2d 195, 118 Misc.2d 752, rev'd 103 A.D.2d 111, 479 N.Y.S.2d 51 (2d Dept. 1984) rev'd for reasons stated by Justice Spatt at Special Term, 64 N.Y.2d 834, 486 N.Y.S.2d 933 (1985).

As an Appellate Division Justice

In the Appellate Division, Second Department, there are three types of opinions issued. First, there is the short memorandum opinion in which all four judges concur, with no single author named. Second, there is a *per curiam* opinion issued by all four judges which is a longer opinion than the memorandum opinion, but no single author named. Third, there is the signed opinion by one judge, which type of opinion generally deals with significant issues of first impression. Since I have been on benches that have issued in excess of 3,000 memorandum (unsigned) opinions, I am not listing the reversals by the Court of Appeals of those opinions because of the difficulty in ascertaining that information. To my knowledge, the data cannot be obtained through Lexis or Westlaw

In this regard, I note that as a certiorari court, the New York Court of Appeals probably accepts less than five per cent of our cases. Therefore, with regard to the more than 3,000 unsigned memorandum decisions in which I have participated, they probably accepted between 100 and 130 cases.

As to the twenty single-author opinions I have written in the Appellate Division, there have been no reversals by the Court of Appeals.

3. Citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions.

a) *O'Neil v Peekskill Faculty Assoc.*, 120 A.D.2d 36, 507 N.Y.S.2d 173 (2d Dept. 1986) appeal dismissed, 69 N.Y.2d 984, 516 N.Y.S.2d 1027 (1987).

b) *Waldman v Cohen*, 125 A.D.2d 116, 512 N.Y.S.2d 205 (2d Dept. 1987).

c) *Dozier v New York City Transit Authority*, 130 A.D.2d 128, 519 N.Y.S.2d 135 (2d Dept. 1987).

d) *People v McGrath*, 135 A.D.2d 60, 524 N.Y.S.2d 214 (2d Dept. 1988) affirmed for reasons stated in the Appellate Division opinion, 73 N.Y.2d 826, 537 N.Y.S.2d 480 (1988).

e) *Kuriansky v Bed-Stuy Health Care Corp.*, 135 A.D.2d 160, 525 N.Y.S.2d 225 (2d Dept. 1988), *aff'd*, 73 N.Y.2d 875, 538 N.Y.S.2d 233 (1988).

f) *Long Island Lighting Co. v Mack*, 137 A.D.2d 295, 529 N.Y.S.2d 502 (2d Dept. 1988).

g) Town of Islip v Caviglia, et ano, 141 A.D.2d 148, 532 N.Y.S.2d 783 (2d Dept. 1988), aff'd, 73 N.Y.2d 544, 542 N.Y.S.2d 139 (1989).

16. Public Office: State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.

I have held no public offices other than the judicial positions set forth in Item I(14). As to party position, I was an elected Democratic committeeperson in Brooklyn from approximately 1954 to approximately 1959 and in Nassau County from approximately 1962 to 1978.

I was an unsuccessful candidate for District Court Judge of Nassau County in 1975, 1976 and 1977.

17. Legal Career:

a. Describe chronologically your law practice and experience after graduation from law school including:

1. whether you served as clerk to a judge.

I did not serve as a clerk to a judge.

2. whether you practiced alone, and if so, the addresses and dates;

I practiced alone and with associates as Arthur D. Spatt, Esq. at 295 Madison Avenue, New York, New York 10017, between 1953 and 1967.

3. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been connected, and the nature of your connection with each;

1949 -- Davidson & Davidson, Esqs., former address at 40 Wall Street, New York, NY -- pre-admission associate attorney

1950 -- Lane, Winard, Robinson & Schorr, Esqs., former address at 67 W. 44th Street, New York, NY -- associate attorney

1951-1952 -- Alfred S. Julien, Esq., now deceased, former address at 15 Park Row, New York, NY -- associate attorney

1953 -- Florea & Florea, Esqs., former address at 295 Madison Avenue, New York, NY -- associate attorney

1953-1967 -- Arthur D. Spatt, Esq., 295 Madison Avenue, New York, NY -- owner

1967-1973 -- Spatt & Bauman, Esqs., (to 1970) 295 Madison Avenue, New York, NY -- senior partner

1973-1974 -- Spatt, Bauman & Wilkins, Esqs., 225 West 34th Street, New York, NY -- senior partner

1975-1978 -- Spatt & Bauman, P.C., 225 West 34th Street, New York, NY -- chief trial counsel, senior partner, officer, director and sole stockholder of professional corporation.

b. 1. What has been the general character of your law practice, dividing it into periods with dates if its character has changed over the years?

From the beginning, I specialized in litigation. I was a trial attorney -- mostly of counsel to the profession -- having a varied litigation practice mainly in tort law and also in contract and some criminal and corporation law and other types of trial work. Most of my cases were jury trials. I also did appellate work in connection with my litigation practice.

2. Describe your typical former clients, and mention the areas, if any, in which you have specialized.

My former clients in the tort field ranged in age from very young to elderly; rich, middle income and poor; and from every possible background, race and creed. In contrast, I also represented a casualty insurance company. In other areas of the law, I represented officers and stockholders of small and moderately-sized corporations; and various individuals in criminal matters, mostly referred to me by persons known to me.

c. 1. Did you apear in court frequently, occasionally, or not at all? If the frequency of your appearances in court varied, describe each such variance, giving dates.

I appeared in court regularly, virtually on a daily basis.

2. What percentage of these appearances was in:
(a) federal courts -- approximately 5%
(b) state courts of record -- approximately 94%
(c) other courts -- approximately 1%

3. What percentage of your litigation was:
(a) civil -- approximately 97%
(b) criminal -- approximately 3%

4. State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

Between 1950 and 1978, I tried to verdict or non-jury judgment approximately 260 cases. In almost all of these cases, I was sole counsel or chief counsel. Only in a few cases was I associate counsel.

5. What percentage of these trials was:
(a) jury -- approximately 95%
(b) non-jury -- approximately 5%

18. Litigation: Describe the ten most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

(a) the date of representation;
(b) the name of the court and the name of the judge or judges before whom the case was litigated; and

(c) the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

Some of the cases I consider significant were settled during trial and/or were unreported, and I no longer have the files. I therefore will list cases which went to judgment and were appealed, providing me with sufficient details. The cases will be set forth chronologically.

1. *Bernard v Seyopp Corp.*, 11 A.D.2d 140, 202 N.Y.S.2d 707 (1st Dept. 1960), *aff'd*, 9 N.Y.2d 679, 212 N.Y.S.2d 412, 173 N.E.2d 235 (1961). This case was tried in Supreme Court, New York County, in 1959 before the Hon. Harry B. Frank, retired. I represented the plaintiff in an action to recover damages for personal injuries, and the issue involved the procedure that a trial judge should follow in order to preserve a verdict and prevent a mistrial at the crucial phase in the case when, following jury deliberation, they render an irregular verdict due to their confusion. Eugene Sweeney represented the defendants at trial (address unknown) and Dominick R. Santomenna, Esq., 337 Wagner Avenue, Mamaroneck, New York (914-698-0394) represented the defendants on appeal.

2. *LaScala v R.C. Church of St. Lucy*, 24 A.D.2d 1079, 265 N.Y.S.2d 589 (1st Dept. 1965). The case was tried in Supreme Court, New York County, in 1964 before the Hon. Edward Dudley. I represented the plaintiff, and the defendant was represented at trial by George S. Pickwick, 99 Pondfield Road, Bronxville, New York, 212-410-2908. The issue involved the liability of the church for injuries to an altar boy who was set on fire while lighting incense.

3. *Lichtrule v City Savings Bank of Brooklyn*, 29 A.D.2d 565, 286 N.Y.S.2d 307 (2d Dept. 1967). Appeal from a judgment of the Supreme Court, Kings County, entered January 17, 1966, before the Hon. Walter R. Hart, deceased. The defendant's attorney was William Ahmuty (now deceased) (his son is William Ahmuty III, 200 I.U. Willets Road, Albertson, NY 11507, 516-294-5433) at trial and Richard J. Burke, New York City, of counsel (address unknown) on appeal. A novel evidentiary issue involved the admission of self-serving statements by the plaintiff in the hospital record after an attack on her testimony as a "recent fabrication".

4. Rose v Bagon, 37 A.D.2d 949, 326 N.Y.S.2d 222 (1st Dept. 1971). The case was tried in Supreme Court, Bronx County, in 1970 before the Hon. Nathaniel T. Helman, retired. This was a products liability case involving a defect in a beauty parlor chair which broke off at the stem, causing serious injuries to a patron. Among the issues was whether the doctrine of res ipsa loquitor (the thing speaks for itself) was applicable even though proof of a specific defect was offered. I represented the plaintiff, and defendants' counsel were Richard Sheller, Esq., whose address and telephone number are believed to be 19 West 44th Street, New York, New York, 212-575-6560, and Anthony J. McNulty, Sr., whose address and telephone number are believed to be 225 Broadway, New York, New York, 212-608-1220.

5. Lewin v Bock Laundry Machine Co., 38 A.D.2d 791, 329 N.Y.S.2d 791 (2d Dept. 1972). This case was tried in Supreme Court, Kings County, before the Hon. Harold McLaughlin (retired) in 1971. The plaintiff's arm was pulled off in a revolving clothes dryer. This was a products liability case and involved the liability of the manufacturer of a laundry dryer who had sold the machine approximately fifteen years prior to the incident, based on a theory of breach of warranty. This case was tried prior to the evolution of the doctrine of strict products liability. The defendant was represented by C. Raymond Nelson, Esq., address unknown.

6. Weiner v Weiner and Greyhound Corp., 386 F.Supp 951 (USDC ED NY 1974) aff'd, 535 F2d 1244 (no opinion). This case was tried in the United States District Court for the Eastern District of New York before Judge John Dooling, deceased, in 1974. The issue on appeal involved an inflammatory summation by defendant's counsel and the failure by the trial Court to charge the jury on the Noseworthy doctrine (a lesser burden of proof on the plaintiff in a wrongful death action). Counsel for the defendant Weiner was Stanley W. Zawacki, 116 John Street, New York, New York, 212-732-3377.

7. Cetta v City of New York, 46 A.D.2d 762, 361 N.Y.S.2d 10 (1st Dept. 1974). This was an appeal from a judgment of Supreme Court, New York County, Justice Harold Baer entered April 12, 1973. The case involved the right to produce expert testimony as to a traffic hazard. I represented the plaintiffs, and the defendant was represented by the

Corporation Counsel of the City of New York, 100 Church Street, New York, New York, 212-566-3929, by M. H. Selman, address unknown.

8. Carlson v Good Samaritan Hospital, 51 A.D.2d 741, 379 N.Y.S.2d 386 (2d Dept. 1976). The case was tried in Supreme Court, Rockland County, before the Hon. Theodore Kelly in 1975. I represented the plaintiff, and the defendant was represented by Dennis O'Connor of 50 Main Street, White Plains, New York, 914-948-0500. The case involved burn injuries to a woman while undergoing a D and C surgical procedure under a defective overhead lamp in the operating room.

9. Marino v Leonard, 75 A.D.2d 639, 427 N.Y.S.2d 290 (2d Dept. 1980). Appeal from a judgment of Supreme Court, Kings County, Justice Gerald Adler, entered July 5, 1978. I represented the plaintiff, and the case involved an automobile accident followed by a medical malpractice action as a result of alleged mistreatment of the injured party. Some of the attorneys for the defendant were Michael J. Roe, 374 Hillside Avenue, Williston Park, New York, 516-248-1200, and David M. Covey, address unknown.

10. Somersall v New York Telephone Co., 74 A.D.2d 302, 427 N.Y.S.2d 247 (1st Dept. 1980), judgment entered 12/12/78 Supreme Court, New York County, reversed, 52 N.Y.2d 157, 436 N.Y.S.2d 858, 418 N.E.2d 373 (1981). I tried the case in Supreme Court, New York County, in 1977 or 1978 before the Hon. Alfred M. Ascione. Some of the counsel are as follows: Samuel J. Sussman of counsel (Hoberman, Sussman, Bloom & Reich, P.C., attorneys for Sylvia Collins and another, respondents, 16 Court Street, Brooklyn, New York, 718-625-1100); Herman Schmertz of counsel (Gair, Gair & Conason, attorneys for Gertrude Thomas, respondent, 80 Pine Street, New York, New York, 212-943-1090). The case dealt with the issue of proximate cause in a major disaster accident caused by a double-parked telephone truck. I represented three of the plaintiffs.

19. Legal Activities: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe the nature of your participation in this question, please omit any information protected by the attorney-client privilege (unless the privilege has been waived.)

a) In 1978, I was counsel for a group of property owners who resided in the vicinity of Kennedy Airport and whose lives were diminished by the incessant jet airplane noise in the takeoffs and landings at the airport. The case was a pioneer action brought in the U. S. District Court for the Eastern District against the operators of Kennedy Airport and other defendants. Among the causes of action were those sounding in nuisance, trespass and violations of the Fifth Amendment (taking property without just compensation) and the Fourteenth Amendment (taking property without due process of law). I believe the judge assigned to the case was the Hon. Henry Bramwell, retired. I was elected to the bench during the pendency of this complex lawsuit.

b) George Whitmore was a young black man who was unjustly accused of perpetrating the infamous Wylie-Hoffert murders in the early 1970's. Upon evidence that the District Attorney's office had knowledge that Mr. Whitmore was innocent of these brutal murders and, despite such knowledge, charged and imprisoned him, we commenced an action for malicious prosecution, false arrest and violation of his civil rights. The action was brought in Supreme Court, Kings County, and involved substantial statute of limitation problems regarding the required timeliness of the notices of claim and the commencement of the action. Ultimately, one Richard Robles was tried and convicted for the Wylie-Hoffert murders. Again, I ascended the bench prior to the trial of this lawsuit.

c) Early in my career, in approximatley 1955, I represented all of the homeowners on my street in Brooklyn, New York (East 29th Street between Avenue "Z" and Voorhees Avenue) in a class action lawsuit against the builder of the homes on the ground that it had improperly and intentionally held back a sewer assessment until title to all the homes had passed to the homeowners. The case was settled just before trial in the Municipal Court of the City of New York. Among the terms was the payment by the builder of the sum of $300 to each homeowner.

d) Sometime in the mid-1970's, the federal government brought a proceeding against all the smoked fish plants in the City of New York. The goverment requested a permanent injunction closing all the plants on the ground that they did not process the fish at a high enough temperature so as to prevent the possible infestation of salmonella bacteria. I represented three smoked fish companies in the lawsuit in the U. S. District Court for the Eastern District before the Hon. Walter Bruchhausen, now retired and perhaps deceased. My co-counsel was the Hon. William Brennan, then a partner with the firm of Reavis & McGrath, 345 Park Avenue, New York, New York, 212-486-9500. After a non-jury trial, the smoked fish companies prevailed after presentation of expert testimony that the fish were sufficiently heated to kill the salmonella bacteria, and that any additional heat would crumble the fish.

e) Also in the mid-1970's, there was a tragic collision between a school bus and a train in Valley Cottage, Rockland County, New York. The train hit the crowded school bus at full speed, and the remains of the bus and its contents were strewn over 1500 feet of track. As I recall, seven children were killed, and the remaining forty were seriously injured. I represented three of the injured children. My case was the last one to be settled in Supreme Court, Rockland County, before the Hon. Morton Silberman (now a judicial hearing officer and in practice with the firm of Clark, Gagliardi & Miller, P.C. at 99 Court Street, White Plains, New York 10601, 914-946-8900).

f) As a result of an adjacent excavation on East 34th Street in Manhattan, an apartment building collapsed into the construction hole in the late 1960's. I had the privilege of being lead counsel for the thirty or more plaintiffs. The case was tried in Supreme Court, New York County, in the early 1970's before the Hon. George Postel (now retired and a judicial hearing officer who, I believe, resides at 520 East 90th Street, New York, New York, 212-369-2664). The trial resulted in a verdict in favor of the plaintiffs against the excavating corporation. Trial counsel for the defendants was Henry G. Miller, former President of the New York State Bar Association, and another member of the firm of Clark, Gagliardi & Miller, P.C. whose office is 99 Court Street, White Plains, New York 10601, 914-946-8900.

II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients, or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.

a) I am presently in Tier 3 of the New York State Retirement System. My pension vested after 10 years of service. If I were to retire with less than 25 years of service, my retirement allowance would be 1.66% of my final average salary (which is the average of the 3 highest consecutive years) multiplied by the number of years of credited service. As a Tier 3 member, I contribute 3% of my salary to the pension fund. My contribution balance is presently approximately $30,000.

b) Prior to December 31, 1978, I practiced law with the firm of Spatt & Bauman, P.C., a New York State professional corporation in which I was President, a director, sole stockholder and chief trial counsel. The firm specialized in litigation, primarily representing other attorneys as trial counsel. I personally tried most of the cases and performed legal services on all of the litigation files in the firm at that time. I also assumed the major responsibility for the obtaining and processing of all the litigation files in the firm.

As a result of my election as a Justice of the Supreme Court of the State of New York in November 1978, I prepared to enter into an agreement in which I was to resign as an officer and director of the professional corporation and totally withdraw from the practice of law as of December 31, 1978. The agreement provided for transfer of my stock in the professional corporation to Bert Bauman, Esq. and to the corporation for redemption. The agreement further provided that I would receive a sum of money for the sale and redemption of my shares of stock as determined by an evaluation of the assets owned by the corporation including books, fixtures, office equipment, furniture, the substantial disbursements advanced by me, the leasehold and leasehold improvements and a fair appraisal of my legal services rendered prior to that time and the responsibilities I assumed with regard to the cases then in the firm. The sum of money was to be payable quarterly over a period of ten years commencing January 1, 1980 and terminating on October 1, 1989, with interest at 6% per annum and has been paid in full.

The agreement further stated that I have no duty or obligation to render or provide any services to the corporation whatsoever on and after December 31, 1978. The agreement goes on to provide that "Each of the parties hereto specifically intends that this agreement, both in letter and spirit, shall be fully consistent with the code of judicial ethics and with the canons of ethics applicable to attorneys at law and judges."

Prior to entering into this agreement, I wrote to the Counsel of the Office of Court Administration of the State of New York advising that office of the nature of the agreements and requested an advisory opinion as to the ethical considerations. On December 29, 1978, the Deputy Counsel to the Office of Court Administration wrote to me and stated that the arrangements set forth above "appear to be in accord with the requirements of the code of Judicial Conduct". I was also advised, of course, to disqualify myself from any matter pending in our office as of December 31, 1978, and any matter handled by Bert Bauman, Esq. or any lawyers with whom he may be associated in the future and to file the proper closing statements.

I enclose herewith a copy of the December 29, 1978 letter by the Deputy Counsel (marked Exhibit "B").

I have strictly adhered to the advice by the Counsel of the Office of Court Administration of the State of New York.

c) As a participating member of the Spatt & Bauman, P.C. pension and profit-sharing plan, when I withdrew from the firm and the practice of law, my share of the pension plan was severed and "rolled over". The funds were never used and were placed in individual retirement accounts in two types of investments, as follows:

1) bonds and stocks as set forth in the annexed statement of the period ending August 25, 1989 (marked Exhibit "C") in the present aggregate value of $118,902.

2) cash in Savings of America Bank, Hewlett, New York branch, in the sum of $66,753.82 as of October 8, 1989,

d) Prior to entering into the Spatt & Bauman, P.C. pension plan, when I was a single practitioner I started an individual retirement "Keogh Plan". When I withdrew from the practice of law, I "rolled over" the Keogh Plan, and it remains in that unused condition. The "Keogh" funds are in an Oppenheimer High Yield Fund and are in the value of approximately $34,507.00 (see annexed statement as of October 19, 1989, marked Exhibit "D").

e) Stock

Standard Oil of California (Chevron)	80 shares
Xerox Corporation	30 shares
Eastman Kodak Co.	100 shares
Pepsi Co. Inc.	216 shares
Kappa Frocks Inc.	100 shares
Scientific Environmentals	220 shares
Tambrands, Inc.	200 shares
Educational Opportunities, Inc.	500 shares
Tandem Computers Inc.	1000 shares
American Telephone & Telegraph	55 shares
Bell Atlantic Corp.	10 shares
U. S. West Inc.	10 shares
Southwestern Bell Corp.	15 shares
Bell South Corp.	22 shares
American Information Technologies Corp.	7 shares
Pacific Telesis	20 shares

2. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts of interest during your initial service in the position to which you have been nominated.

If there is any case before me that involves a firm in which I own any stock, I would, of course, recuse myself. Moreover, if I find that my stock ownership, which is not extensive, would interfere in any manner with the proper conduct of my judicial office, I will immediately sell all of my stock. In this regard, I will comply in every regard with the provisions of the Code of Judicial Conduct and the guidelines of the Judicial Conference as they relate to conflict of interest considerations and recusals.

With regard to my former law firm, I have and will strictly adhere to the safeguards referred to in my prior discussion of that matter.

3. Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court?

None.

4. List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding $500 or more (If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here.)

1988

Salary		$102,143
Interest income (see Schedule 1)		$ 26,554
Dividend income (see Schedule 2)		$ 2,079
Capital gain		$ 70,399
1) Long-term gain from installment sale (stock in Spatt & Bauman, P.C. as per termination agreement)	$69,841	
2) Long-term gain from Berkshire Land Venture (a limited partnership)	$ 558	

1989

Salary as of 10/25/89	$86,492.78
Interest income to date (estimated)	$23,000.00
Dividend income to date (estimated)	$ 1,500.00
Capital gain to date (estimated)	$43,000.00

5. Please complete the attached financial net worth statement in detail (Add schedules as called for).

> Please see annexed financial net worth statement and schedules.

6. Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

> I was a Democratic committeeperson in Brooklyn from approximately 1954 to approximately 1959 and in Nassau County from approximately 1962 to 1978. In that capacity and during those years, I took part in most election campaigns in my area.

III. GENERAL (PUBLIC)

1. An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

I left the practice of law more than ten years ago to assume judicial position. As an attorney, I performed pro bono work for disadvantaged persons. However, I only recall several specific instances:

(1) In the mid-1970's, a neighbor's son was arrested for slashing the throat of the mailman and was charged with felony assault. The family was destitute, and the mortgage on their house was being foreclosed. I represented Glenn Marlowe in the criminal prosecution in the County Court, Nassau County, without a fee.

(2) During the years 1964 through 1968, I encouraged my former associate, Bert Bauman, Esq., to participate in a pro bono program in the Bronx in which he represented poor and elderly persons in a myriad of legal activities, including substantial work involving the New York City Housing Authority. Much of this work was done during office time. I estimate we had between 50 to 100 such cases in the office.

(3) During the 1970's, I participated in the New York City High School Intern Program wherein young interns were assigned to my office and worked with me in the office and in court. I personally had four or five such interns with me on trial at various times.

(4) During the 1970's, I was on the list of attorneys available for federal pro bono assignments in New York City but was never called.

(5) As Administrative Judge of Nassau County, in 1983, together with Thomas Maligno, Esq. and Adrienne Flipse, Esq., I initiated the first voluntary pro bono program in Nassau County. Today, this is a vital and constructive major pro bono program involving several hundred lawyers and support staff consisting of psychologists and counselors, all providing legal services for destitute persons in civil cases in Nassau County.

2. The American Bar Association's commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex or religion. Do you currently belong, or have you belonged, to any organization which discriminates -- through either formal membership requirements or the practical implementation of membership policies? If so, list, with dates of membership. What you have done to try to change these policies?

I belong to no organization that invidiously discriminates on the basis of race, sex or religion or whose membership practices are in violation of any federal or state constitution, statute or decision. I do belong to the Masons wherein women participate in an auxilliary capacity. The Masons are solely a fraternal, benevolent and charitable organization.

3. Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, did it recommend your nomination? Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and interviews in which you participated).

There is a selection commission in New York to recommend candidates for nomination to the federal courts. It is called the "Judicial Screening Committee of Senator Alfonse M. D'Amato". I appeared before the said Judicial Screening Committee. I was recommended to the Department of Justice where I was interviewed by members of the staff of the Attorney General. Thereafter, I was notified that further consideration would be given to my nomination. I was then interviewed by the Federal Bureau of Investigation as part of their investigation. Also, the Standing Committee on Federal Judiciary of the American Bar Association conducted an investigation as to my qualifications, including a personal interview. Ultimately, I received a call from the President of the United States advising me that my nomination would be forwarded to the United States Senate Committee on the Judiciary.

4. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as asking how you would rule on such case, issue or question? If so, please explain fully. No.

5. Please discuss your views on the following criticism involving "judicial activism."

The role of the Federal judiciary within the Federal government, and within society generally, has become the subject of increasing controversy in recent years. It has become the target of both popular and academic criticism that alleges that the judicial branch has usurped many of the prerogatives of other branches and levels of government.

I recognize the significant constitutional concept of the "separation of powers". I believe that judges should decide the case before them based on the facts in the subject case and not reach out for problems unrelated to the case in order to address other concerns. A judge should exercise judicial restraint to avoid the determination of cases that are not "ripe" for resolution: should deal with specific problems and avoid overbroad, sweeping concepts beyond the scope of the litigation at hand or the facts and law at issue; and should recognize settled rules of law involving the limited judicial review of decisions of administrative agencies and other institutions.

AFFIDAVIT

I, ARTHUR D. SPATT, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

October 27, 1989
(DATE)

Arthur D. Spatt
(NAME)

Thecla S. Johnides
(NOTARY)

THECLA S. JOHNIDES
Notary Public, State of New York
No. 52-4040632
Qualified in Nassau County
Term Expires ~~March 30, 19~~ 12/31/89

FINANCIAL STATEMENT

NET WORTH

OF ARTHUR D. SPATT & DOROTHY G. SPATT

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS		
Cash on hand and in banks	277,000	00
U.S. Government securities—add schedule		
Listed securities—add schedule	67,486	00
Unlisted securities—add schedule	2,801	00
Accounts and notes receivable:		
Due from relatives and friends		
Due from others		
Doubtful		
Real estate owned—add schedule	360,000	00
Real estate mortgages receivable		
Autos and other personal property (est. value)	30,000	00
Cash value—life insurance	16,704	00
Other assets—itemize:		
IRA accounts — cash	81,291	00
IRA accts.-securities (Exhibits A & B)	153,409	00
*continued below		
Total assets	1,185,550	00

LIABILITIES		
Notes payable to banks—secured		
Notes payable to banks—unsecured		
Notes payable to relatives		
Notes payable to others		
Accounts and bills due		
Unpaid income tax		
Other unpaid tax and interest		
Real estate mortgages payable—add schedule	23,411	09
Chattel mortgages and other liens payable		
Other debts—itemize:		
Loan on cash surrender value of Mut. Life Ins. Co.	3,378	69
Total liabilities	26,789	78
Net worth	1,158,760	22
Total liabilities and net worth	1,185,550	00

CONTINGENT LIABILITIES		
As endorser, comaker or guarantor	None	
On leases or contracts	None	
Legal Claims	None	
Provision for Federal Income Tax	None	
Other special debt	None	

GENERAL INFORMATION

Are any assets pledged? (Add schedule.) No

Are you defendant in any suits or legal actions? None except as Justice

Have you ever taken bankruptcy? No

*Listed securities —	
Bonds (Sched. 2)	157,000.00
Limited Partnerships	8,859.00
N.Y. State Retirement Pension (est.)	30,000.00

AMERICAN BAR ASSOCIATION
Standing Committee on Federal Judiciary
1800 M Street, NW
Washington, DC 20036
(202) 331-2210

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[illegible]
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Columbus, OH 43215
SEVENTH CIRCUIT
[illegible]
EIGHTH CIRCUIT
[illegible]
NINTH CIRCUIT
[illegible]
TENTH CIRCUIT
[illegible]
ELEVENTH CIRCUIT
[illegible]
DISTRICT OF COLUMBIA CIRCUIT
[illegible]
FEDERAL CIRCUIT
[illegible]
STAFF LIAISON
[illegible]

CONFIDENTIAL

October 26, 1989

Hon. Joseph R. Biden, Jr.
Chairman, Committee on the Judiciary
United States Senate
SD 224
Washington, D.C. 20510-0802

RE: HON. ARTHUR D. SPATT
United States District Court for the
Eastern District of New York

Dear Senator Biden:

Thank you for affording this Committee an opportunity to express an opinion pertaining to the nomination of Judge Arthur D. Spatt for appointment as Judge of the United States District Court for the Eastern District of New York.

Our Committee is unanimously of the opinion that Judge Spatt is Well Qualified for this appointment.

A copy of this letter has been sent to Judge Spatt for his information.

Sincerely,

Ralph Lancaster

Ralph I. Lancaster, Jr.
Chairperson

RIL/sm

cc All Committee Members
Hon. Arthur D. Spatt
Barbara Drake, Esq.

EDWARD W. NOTTINGHAM

Birth:	January 9, 1948	Denver, Colorado
Legal Residence:	Colorado	
Marital Status:	Married	Janis Chapman 3 children
Education:	1965 - 1969	Cornell University A.B. degree, magna cum laude
	1969 - 1972	University of Colorado at Boulder Law School J.D. degree
Bar:	1972	Colorado
Experience:	1972 - 1973	Law Clerk to Hon. Alfred Arraj U.S. District Court District of Colorado
	1973 - 1976	Dawson, Nagel, Sherman & Howard Associate
	1976 - 1978	Assistant U. S. Attorney District of Colorado
	1978 - 1987	Sherman & Howard Associate, 1978-1980 Partner, 1980-1987
	1987 - present	Beckner & Nottingham, P.C. Partner
Office:	840 Valley Federal Plaza 225 North Fifth Street (P.O. Box 2846) Grand Junction, Colorado 81502 303 245-4300	
Home:	3138 Cloverdale Court Grand Junction, Colorado 81506	

To be United States District Judge for the District of Colorado

I. BIOGRAPHICAL INFORMATION (PUBLIC)

1. Full name (include any former names used.)

Edward Willis Nottingham, Jr.

2. Address: List current place of residence and office address(es).

Office:	Home:
Beckner & Nottingham, P.C. **P.O. Box 2846** **850 Valley Federal Plaza** **225 North Fifth Street** **Grand Junction, CO 81502** **(303) 245-4300.**	**3138 Cloverdale Court** **Grand Junction, CO 81506**

3. Date and place of birth.

January 9, 1948 in Denver, Colorado.

4. Marital Status: (include maiden name of wife, or husband's name).

Married to Janis Ellen Chapman.

List spouse's occupation, employer's name and business address(es).

Lawyer (Deputy District Attorney)
Mesa County District Attorney's Office
P.O. Box 20,000-5031
Grand Junction, CO 81502

5. Education: List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.

Cornell University
Ithaca, NY 14853
attended 9/65 -- 6/69
received A.B. degree 6/69

University of Colorado Law School
Boulder, CO 80309
attended 9/69 -- 6/72
received J.D. degree 6/72

6. Employment Record: List (by year) all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including firms, with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.

Beckner & Nottingham, P.C.
P.O. Box 2846
850 Valley Federal Plaza
Grand Junction, CO 81502
(303) 245-4300
[shareholder/officer/director, 4/87 to date]

Sherman & Howard
3000 First Interstate Tower North
633 Seventeenth Street
Denver, CO 80202
(303) 297-2900
[employee, 8/73--8/76 and 8/78--4/80; partner, 4/80 to 4/87]

U.S. Department of Justice
U.S. Attorney for District of Colorado
1200 Rogers Federal Building
1961 Stout Street
Denver, CO 80202
(303) 844-2081
[employee, 8/76--8/78]

United States Courts
U.S. District Court, District of Colorado
1929 Stout Street
Denver, CO 80202
(303) 844-3433
[employee, 8/72--8/73]

Pershing Investment Company
c/o Rodney D. Knutson, Managing Partner
1650 Hudson's Bay Centre
1600 Stout Street
Denver, CO 80202
(303) 825-4877
[partner, 3/81 to present]

Hodges, Harrington, Kerwin & Otten [now merged into Davis, Graham & Stubbs]
Attn: Randall Weeks
Suite 4700
370 Seventeenth Street
P.O. Box 185
Denver, CO 80201-0185
(303) 892-9400
[summer legal clerk 6/71--8/71]

U.S. Senator Gordon Allott
U.S. Senate Republican Policy Committee
Senate Office Building
Washington, D.C.
[summer intern 6/70--8/70]

E. Willis Nottingham
P.O. Box 969 (four miles North of Craig, CO)
Craig, CO 81625
(303) 824-3333
[employee 6/69--8/69]

7. Military Service: Have you had any military service? If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received.

   No.

8. Honors and Awards: List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.

   Graduated with honors (magna cum laude) in government from Cornell University;

   Delta Sigma Rho/Tau Kappa Alpha National Forensics Honorary Society (Cornell University Chapter);

   Order of the Coif (University of Colorado Law School Chapter).

   Board of Editors, University of Colorado Law Review.

9. Bar Associations: List all bar associations, legal or judicial-related committees or conferences of which you are or have been a member and give the titles and dates of any offices which you have held in such groups.

   1) Colorado Bar Association
   member 8/73 to present
   1900 Grant Street, Suite 950
   Denver, CO 80203-4309
   (303) 860-1112

      a) (Criminal Law Section) executive council member (1981--1988); secretary (1981--1983); chairman (1983--1985).

      b) (Ethics Committee) member (1980--present); vice chairman (1987--1988); chairman (1988--1989).

   2) Denver Bar Association
   member 8/73 to 6/89
   1900 Grant Street, Suite 950
   Denver, CO 80203-4309
   (303) 860-1112

3) Mesa County Bar Association
member 4/87 to present
c/o Kelly Summers, President
United Bank Center, Suite 400
2008 North Avenue
Grand Junction, CO 81501
(303) 242-7322

4) American Bar Association
member 8/73--present
750 North Lakeshore Drive
Chicago, IL 60611
(312) 988-5000

a) (Criminal Justice Section) liaison from Colorado Bar Association to Executive Council of Criminal Justice Section (1983--present).

5) Colorado Trial Lawyers Association
1888 Sherman Street
Denver, CO 80203
(303) 831-1192
member 8/73 to 4/87

6) American Trial Lawyers Association
1050 31st Street, NW
Washington, DC 20007
(202) 965-3500
member 8/73 to date

7) National Association of Criminal Defense Lawyers
Suite 1150
1110 Vermont Avenue, NW
Washington, DC 20005
(202) 872-8688
member 5/85 to 5/87

8) Colorado Criminal Defense Bar
1741 High Street
P.O. Box 18647
Denver, CO 80218
[no tel. number]
member 4/79 to 4/88

10. Other Memberships: List all organizations to which you belong that are active in lobbying before public bodies. Please list all other organizations to which you belong.

1) Beaver Creek Metropolitan District
P.O. Box 976
Avon, CO 81620
(303) 949-5476
Participation:
This is a local government entity which furnishes roads, utilities, and other services to the geographical area which it encompasses. I was a member of the board of directors from 5/80 through 5/88.

2) Justice Information Center
1129 Cherokee Street
Denver, CO 80294
(303) 623-5750
Purpose:
to furnish and coordinate, on a non-profit basis, interpreters and translators for Denver County Court and other court systems in Colorado.
Participation:
I was a member of this board from 2/85 through 2/87.

3) Twenty-first Judicial District (Mesa County, Colorado)
Victim Compensation Board
P.O. Box 20000-5031
Mesa County Courthouse
Grand Junction, Co 81502
(303) 244-1730
Purpose:
to administer the statutory fund established to aid and compensate victims of crime.
Participation:
I have been a member of this board since 7/87.

4) Denver Athletic Club
1325 Glenarm Place
Denver, CO 80204
(303) 534-1211
member 6/74 to present

5) Denver Law Club
c/o Marion A. Brewer, President
Colorado Counties, Inc.
1177 Grant Street
Denver, CO 80203
(303) 861-4071
member, 10/78 to present

11. Court Admission: List all courts in which you have been admitted to practice, with dates of admission and lapses if any such memberships lapsed. Please explain the reason for

any lapse of membership. Give the same information for administrative bodies which require special admission for practice.

Colorado Supreme Court
admitted 9/27/72

United States District Court for the District of Colorado
admitted 9/27/72

United States Court of Appeals for the Tenth Circuit
admitted 7/12/73

12. Published Writings: List the title, publishers, and dates of books, articles, reports, or other published material you have written or edited. Please supply one copy of all published material not readily available to the Committee. Also, please supply a copy of all speeches by you on issues involving constitutional law or legal policy. If there were press reports about the speech, and they are readily available to you, please supply them.

Attached, as Exhibits 1 through 5, are the following:

(1) *Formal Opinion No. 75*, Colo. Bar. Ass'n. Ethics Committee, *published in* 16 Colo Lawyer 1431 (1987). [This is my personal work.]

(2) Excerpt from G. Joseph & S. Saltzburg (ed.) *Evidence in America: the Federal Rules in the States* (1987). [I researched and wrote the chapter on rule 608, although it was heavily edited to match the format of other chapters.]

(3) *Report to Accompany Resolution on Attorney Subpoenas*, ABA Crim. Justice Section (1985) [The resolution which this report accompanied, a copy of which is also a part of this exhibit, was adopted as ABA policy by the House of Delegates in 1986. The report is my personal work.]

(4) Comment, *Scope of Searches Incident to Arrest*, 43 Univ. of Colo. L. Rev. 63 (1971). [This is my student work, with editorial input from the law review board of editors.]

(5) Casenote, *Right of Privacy and Emotional Distress in Colorado*, 43 Univ. of Colo. L. Rev. 147 (1971).

[This is my student work, with editorial input from the law review board of editors.]

13. Health: What is the present state of your health? List the date of your last physical examination.

Excellent. September 28, 1989.

14. Judicial Office: State (chronologically) any judicial offices you have held, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

None.

15. Citations: If you are or have been a judge, provide: (1) citations for the ten most significant opinions you have written; (2) a short summary of and citations for all appellate opinions where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings; and (3) citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, please provide copies of the opinions.

Not applicable.

16. Public Office: State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed.

1) **assistant** United States attorney, District of Colorado; **appointed;** served from August 1976 through August 1978.

2) Board of Directors
Beaver Creek Metropolitan District
P.O. Box 976
Avon, CO 81620;
elected; served from May of 1980 through May of 1988.

State (chronologically) any unsuccessful candidacies for elective public office.

None.

17. Legal Career:

a. Describe chronologically your law practice and experience after graduation from law school including:

1. whether you served as a clerk to a judge, and if so, the name of the judge, the court, and the dates of the period you were a clerk;

8/72 -- 8/73
law clerk to Judge Alfred A. Arraj
United States District Court for the District of Colorado

2. whether you practiced alone, and if so, the addresses and dates;

3. the dates, names and address of law firms or offices, companies or governmental agencies with which you have been connected, and the nature of your connection with each;

8/73 -- 8/76
associate attorney
Sherman & Howard
3000 First Interstate Tower North
633 Seventeenth Street
Denver, CO 80202

8/76 -- 8/78
assistant United States attorney
District of Colorado
1200 Byron G. Rogers Federal Building
Drawer 3615
Denver, CO 80202

8/78 -- 3/31/87
associate (from 8/78 through 4/1/80)
partner (from 4/1/80 through 3/31/87)
Sherman & Howard
3000 First Interstate Tower North
633 Seventeenth Street
Denver, CO 80202

4/1/87 -- present
shareholder
Beckner & Nottingham, P.C.
P.O. Box 2846
850 Valley Federal Plaza
Grand Junction, CO 81502

b. 1. What has been the general character of your practice, dividing it into periods with dates, if its character has changed over the years?

From 1973 through 1976, while I was an associate at Sherman & Howard, I was assigned to both the Litigation Department and the Business Department. In the Litigation Department, I worked on commercial, corporate, insurance defense, real estate, and personal injury litigation. I briefly participated in some labor and tax litigation. I also worked in the Business Department on securities matters, business organizations, and general commercial transactions.

From 1976 through 1978, when I was an assistant United States attorney, I was assigned to the Criminal Division of the office. During the first year I tried mostly drug cases and drug conspiracy cases. During the second year, I became part of the white collar crime unit and was involved in tax fraud, bank fraud, fraud against the government, Medicare fraud, and perjury cases.

From 1978 through 1987, having returned to Sherman & Howard, I was assigned to the Litigation Department. In addition to the types of litigation which I had previously undertaken at that firm, I began to specialize in business torts litigation (unfair competition, trade libel, breach of fiduciary duty, theft of trade secrets, interference with contract, etc.), construction litigation, and criminal defense litigation.

Since 1987, my practice at Beckner & Nottingham, P.C. has continued to be a civil litigation practice in all areas previously mentioned. I have done little criminal defense work.

c. Describe your typical former clients, and mention the areas, if any, in which you have specialized.

At Sherman & Howard (which, when I left in 1987, was a firm of 165 lawyers) perhaps two-thirds of my work was done for banks, other financial institutions, corporations having nation-wide operations, and corporations with operations throughout the Rocky Mountain region. The remaining clients, especially in the criminal defense area, were individuals.

At Beckner & Nottingham, P.C., a firm of three lawyers, over half of my clients are individuals, ranchers and farmers, or small businesses. I still represent corporate clients and financial institutions when they have work in this area of Colorado, but this work is less regular than it was at Sherman & Howard.

d. 1. Did you appear in court regularly, occasionally, or not at all? If the frequency of your appearances in court has varied during this period, describe each such variance, giving dates.

Regularly.

2. What percentage of these appearances was in:

1)	Federal courts............	**approx. 60%**
2)	State courts of record....	**approx. 40%**
3)	Other courts..............	**0%**

3. What percentage of your litigation was:

1)	Civil.....................	**approx. 60%**
2)	Criminal..................	**approx. 40%**

4. State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

Over 40. In approximately 35, all occurring since 1976, I have been sole counsel or lead counsel. In the remainder, which occurred at the beginning of my career (before 1976), I was associate counsel.

5. What percentage of these trials was:

1)	Jury	75%
2)	Non-jury	25%

18. Litigation: Describe ten of the most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your

participation in the litigation and the final disposition of the case. Also state as to each case,

(a) the dates of representation;
(b) the name of the court and the judge or judges before whom the case was litigated;
(c) the individual name, address and telephone numbers of co-counsel and of principal counsel for each of the other parties.

I. *United States v. Robert Dunn*, 577 F.2d 119 (10th Cir. 1978), *rev'd*, 442 U.S. 100 (1979).

a) Trial period: commenced April 11, 1977

b) Trial court: Judge Sherman G. Finesilver, United States District Court for the District of Colorado

c) Other counsel:

Daniel J. Sears
1655 Grant Street
Denver, CO 80202
(303) 830-9111

I represented the United States in this prosecution of a Colorado drug dealer for perjuring himself before a federal grand jury. The prosecution was brought under 18 U.S.C. § 1623, a statute which was enacted as part of the Organized Crime Control Act of 1969 and which permitted perjury to be proved by a method not allowed before its existence. I tried the case and handled the appeal to the Tenth Circuit, although I was not involved in presenting the Government's case to the United States Supreme Court. The case involved questions of first impression concerning the scope of the statute and the types of statements which could be used in prosecutions under its authority. The government prevailed in the trial court and the Tenth Circuit, but Dunn's conviction was reversed by the Supreme Court.

II. *United States v. Bump*, 605 F.2d 548 (10th Cir. 1979).

a) Trial period: commenced August 1, 1977
b) Trial court: Judge Alfred A. Arraj, United States District Court for the District of Colorado

c) Other counsel:

Nancy E. Rice
District Judge
Denver District Court
City & County Building
Denver, CO 80202
(303) 575-2711

Philip Hornbein, Jr.
[deceased]

Scott McCarty
Star Route 219
Placitas, NM 87043
(505) 867-4251

I represented the United States at trial and wrote the appellate brief. Ms. Rice orally argued the case before the Tenth Circuit after I had left the U.S. Attorney's Office. Mr. McCarty was defense counsel at trial, while Mr. Hornbein handled the appeal. This was part of a major case charging conspiracy to import large quantities of marijuana from Mexico into remote areas of Colorado. Bump was convicted after a jury trial, and the Tenth Circuit affirmed. The appeal involved the issues of whether the Government invaded the attorney-client privilege and violated rule 16 of the Federal Rules of Criminal Procedure in its examination of defendant at trial.

III. *United States v. Robert Scott Jacobson*, 578 F.2d 863 (10th Cir.), *cert. denied* 439 U.S. 932 (1978).

a) Trial date:	commenced March 14, 1977
b) Trial court:	Judge Sherman Finesilver, United States District Court for the District of Colorado

c) Other counsel:

Alex S. Keller
2480 Prudential Tower
1050 Seventeenth Street
Denver, CO 80265
(303) 571-5302

Joseph Shemaria
[current address and
telephone number unknown]

I represented the Government at trial and on appeal. This was a case charging conspiracy to distribute amphetamines against members of a major drug ring operating in Aspen, Colorado and Los Angeles, California. A prior federal prosecution in California had resulted in an acquittal of the kingpin. Jacobson was convicted after a jury trial, and the Tenth Circuit affirmed the conviction. As a result of this case I received a Letter of Commendation from the Regional Director, Drug Enforcement Administration, Los Angeles. Mr. Keller was defense counsel at trial, and Mr. Shemaria was appellate counsel.

IV. *United States v. James Irwin*, 654 F.2d 671 (10th Cir. 1981), *cert denied*, 455 U.S. 1016 (1982).

a) Trial date: commenced June 26, 1978
b) Trial judge: Richard P. Matsch, United States District Court for the District of Colorado

c) Other counsel:

Stephen L. Waters
William R. Rapson
1099 Eighteenth Street
Suite 2600
Denver, CO 80202
303) 297-2600

Kathryn H. Richman
Legal Department
Manville Corporation
717 Seventeenth Street
Fourth Floor
P.O. Box 5108
Denver, CO 80202
(303) 978-2000

This was a prosecution charging defendant with making false statements and false claims against the Government in connection with a grant from the Economic Development Administration. Defendant was the city manager for the City of Delta, Colorado. Irwin was convicted after a jury trial, and the Tenth Circuit affirmed. The appeal involved the proper interpretation of the federal false claims and false statements statutes. I represented the United States at trial. Ms. Richman handled the appeal after I had left the United States Attorney's Office. Messrs. Waters and Rapson were defense counsel.

V. *United States v. David Kuck*, 573 F.2d 25 (10th Cir. 1978).

a) Trial period: commenced May 2, 1977
b) Trial court: Judge Fred M. Winner [now retired], United States District Court for the District of Colorado

c) Other counsel:

Walter Gerash
1439 Court Place
Denver, CO 80202
(303) 825-5400

This was a case, charging a conspiracy to distribute a controlled substance, against a major amphetamine trafficker in Colorado. Ruck was convicted after a jury trial, and the Tenth Circuit affirmed the conviction. The appeal raised issues concerning the constitutionality of the special parole term provided for in the Comprehensive Drug Abuse Prevention and Control Act of 1970. I represented the United States at trial and on appeal. Mr. Gerash was defense counsel.

VI. *United States v. Rick A Huff, et al.*, 699 F.2d 1027 (10th Cir.), *cert. denied* 461 U.S. 937 (1983).

a) Trial period: commenced October 21, 1981
b) Trial court: Judge Fred M. Winner [now retired], United States District Court for the District of Colorado

c) Other counsel:

Robert T. McAllister
The Chancery, Suite 1515
1120 Lincoln Street
Denver, CO 80203
(303) 830-0566

Gerald Rafferty
United States Attorney's Office
1200 Byron G. Rogers Building
(303) 844-2081

Daniel T. Smith
Suite 200
430 East Seventh Avenue
Denver, CO 80203
(303) 860-8100

Patrick LeHouillier
403 South Tejon Street
Colorado Springs, CO 80903
(719) 471-1330

Jay Gueck
4100 First City Center
1700 Pacific Avenue
Dallas, TX 75201-4618
(214) 969-2800

I was appointed under the Criminal Justice Act to represent Defendant Rick A. Huff in this case. It was a factually-complex mail fraud prosecution arising out of defendants' operation of a brokerage business matching buyers and sellers of small businesses. All defendants were convicted after a jury trial, and the Tenth Circuit affirmed the convictions. Messrs. McAllister and Rafferty were Government counsel, and the other listed lawyers represented other defendants at trial.

VII. *United States v. Arlan Preblud, et al.*, 582 F. Supp. 251 (D. Colo. 1984).

a) Trial period: none [Case was decided on March 28, 1984 on a motion to dismiss indictment.]

b) Trial court: Judge Richard Matsch, United States District Court for the District of Colorado

c) Other counsel:

William Pharo
United States Attorney's Office
1200 Byron G. Rogers Building
Drawer 3615
Denver, CO 80202
(303) 844-2064

Lee Foreman
1034 Logan Street
Denver, CO 80203
(303) 831-7364

Kevin M. Shea
1700 Lincoln Street
Denver, CO 80203
(303) 861-7000

This was a prosecution alleging securities fraud, tax fraud, and fraud against the Government. Defendants were the principals in one of the largest "penny stock" securities dealers in the country. The trial judge's decision, and a related decision in the Colorado state courts, involved several questions of first impression concerning prosecutors' conduct of grand jury proceedings and the sharing of information between state and federal grand juries. Although the trial judge dismissed the indictment, all defendants were re-indicted and ultimately entered into plea bargains. I represented Arlan Preblud, who had been a lawyer for the other defendants. Mr. Pharo was Government counsel. Messrs. Shea and Foreman represented co-defendants.

VIII. *Bakers Park Mining & Milling Company v. Denver District Court*, 662 P.2d 483 (Colo. 1983)

a) Trial period: none [Case arose in April of 1983 on writ to trial judge prohibiting him from holding further hearings on issue of attorney fees.]

b) Trial court: Judge John Brooks, Jr., Denver County [Colorado] District Court

c) Other counsel:

Philip E. Lowrey
Petroleum Club Building
110 Sixteenth Street
Denver, CO 80202
(303) 825-8243

David R. Johnson
Sherman & Howard
3000 First Interstate
Tower North
633 Seventeenth Street
Denver, CO 80202
(303) 297-2900

This case, which came before the Colorado Supreme Court on an extraordinary writ directed to the trial court, raised technical but important issues concerning the scope of court hearings under Colo. R. Civ. P. 120 during the pendency of foreclosures on deeds of trust by public trustees. The Colorado Supreme Court granted the writ which I sought and prohibited the trial court from hearing certain questions. David Johnson and I represented Bakers Park in the trial court and the supreme court. Mr. Lowrey represented the respondent.

IX. *Kenneth Webermeier v. T.S. Pace, et al.*, 552 P.2d 1021 (Colo. App. 1976), *aff'd*, 563 P.2d 950 (Colo. 1977).

a) Trial period: none [Case arose on motion for summary judgment, granted by trial judge on December 30, 1974.]

b) Trial court: Hugh H. Arnold, Weld County [Colorado] District Court

c) Other counsel:

Peter Bjork
Suite 1400
1775 Sherman Street
Denver, CO 80203
(303) 861-4400

Richard H. Bate
600 Seventeenth Street
Suite 420 South
Denver, CO 80202
(303) 620-9401

Theodore E. Worcester
Sherman & Howard
3000 First Interstate Tower North
633 Seventeenth Street
Denver, CO 80202
(303) 297-2900

This case, an action to quiet title to minerals underlying certain unoccupied lands, raised important questions of first impression concerning the interpretation of deeds issued by county treasurers for non-payment of taxes and the scope of Colorado statutes of limitations governing title to real estate. Mr. Worcester and I represented Webermeier, who was claiming under the treasurer's deed. The Colorado Supreme Court affirmed a trial court decision adverse to him. Messrs. Bate and Bjork represented opposing interests.

X. *PMI Mortgage Insurance Co. v. Deseret Federal Savings and Loan*, 757 P.2d 1156 (Colo. App. 1988)

a) Trial period: none [Case arose on trial judge's motion to dismiss, granted in 1986.]
b) Trial court: George B. Lee, Arapahoe County [Colorado] District Court

c) Other counsel:

L. Richard Musat
Suite 1700
1200 Seventeenth Street
Denver, CO 80202
(303) 628-3300

Joseph J. Palmer
Moyle & Draper
600 Deseret Plaza
No. 15 East First South
Salt Lake City, UT 84111-1901
(801) 521-0250

Craig W. Palm
348 Drummer's Lane
Wayne, PA 19087
(215) 645-7060 (work)
(215) 964-9358 (home)

This case raised questions concerning venue and the scope of the doctrine of *forum non conveniens* in Colorado. Mr. Palmer and I represented the interest of Deseret in the trial court. Deseret successfully moved to dismiss, and the Colorado Supreme Court affirmed.

Mr. Palm and I handled the appeal. Mr. Musat was opposing counsel.

19. Legal Activities: Describe the most significant legal activities you have pursued, including significant litigation which you did not progress to trial or legal matters that did not involve litigation. Describe the nature of your participation in this question, please omit any information protected by the attorney-client privilege (unless the privilege has been waived.)

My most significant legal activities are already disclosed in other responses herein.

II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients, or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.

Under the Sherman & Howard Partnership Agreement, I had an interest in the firm's deferred accounts receivable which existed on the date I withdrew from the firm. The value of that interest was determined as of the date I withdrew. This fixed sum is payable in quarterly amounts of $1,868.72 over a period of ten years. The balance due, as of September 30, 1989, is $56,061.20, and final payment is due March 31, 1997. There is no existing contractual right to acceleration of payments into one lump sum, but I have discussed this possibility with representatives of the firm.

I have a continuing, fully-vested interest in pension and retirement plans to which I made contributions while I worked at Sherman & Howard. The plans are administered by trustees and are entities legally separate from Sherman & Howard. The estimated current value of these interests is appromimately $127,000.

Under my agreement with Beckner & Nottingham, P.C., I may receive payments from the firm after I cease employment. These payments would consist of accounts receivable generated by my work as producing attorney during the time I have been employed by the firm. If clients for whom I have worked have not paid the firm by the time of my departure, then the firm will continue to collect those accounts. If and when the accounts are collected, the firm will make any deductions and withholdings required by law and pay the balance to me. A lump-sum settlement is not available.

2. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated.

I believe that the primary areas of concern are: (1) my contractual right to receive payments from Sherman & Howard for my share of the firm's deferred accounts receivable existing on the date of my withdrawal as a partner, (2) my right to receive payments from Beckner & Nottingham, P.C. for accounts receivable which I have generated while employed there, and (3) my status as a general partner in Pershing Investment Company, an investment partnership in which 14 other lawyers are also partners.

a. I am discussing with Sherman & Howard the possibility of accelerating the future payments which the firm owes for my share of the deferred accounts receivable existing as of the date of my withdrawal as a partner. We are attempting to establish a procedure for fixing the present value of these payments. If we cannot negotiate a satisfactory arrangement, I propose, until final payment is made, to recuse myself in any case where Sherman & Howard appears as a party or as counsel.

b. I propose to recuse myself in any case where the successor firm to Beckner & Nottingham, P.C. appears as counsel or as a party, so long as the firm has outstanding accounts receivable which might generate payments to me under the arrangements described elsewhere in my responses here. Because I am currently the only lawyer in the firm who does federal court work, I anticipate that recusal would seldom occur.

c. I am a general partner in only one partnership, Pershing Investment Company. I propose to recuse myself in cases where the partnership is a party or where any of the other general partners appear as parties or counsel.

d. In all other instances, I would proceed on a case-by-case basis, recusing myself where recusal is required by applicable statute, case law, rule, regulation, or ethical precept.

3. Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

   No.

4. List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding $500 or more. (If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here.)

   See Disclosure Report, attached as Exhibit 6.

5. Please complete the attached financial net worth statement in detail (Add schedules as called for).

   See Financial Statement, attached as Exhibit 7.

6. Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

   From October of 1987 through November of 1988, I was a Third Congressional District (Colorado) Coordinator and Mesa County Chairman of George Bush for President.

III. GENERAL (PUBLIC)

1. An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

   From 1973 through 1976, while at Sherman & Howard as an associate, I represented indigent clients qualifying for court-appointed counsel under the federal Criminal Justice Act. I was either appointed myself, or I assisted another lawyer at Sherman & Howard who had actually received the appointment. I also participated in the Denver Bar Association's program to represent indigent clients in domestic cases. Finally, I was appointed by the federal

district court in Colorado to represent a state court prisoner in a petition under 28 U.S.C. § 2255. I do not recall the names of the cases (except for Charles Hampton, the state court prisoner, and Gary Langseth, one of the defendants who qualified for counsel under the Criminal Justice Act), and the firm's records which would permit me to provide this information have been destroyed. I believe that I participated in an average of at least one case per year.

For the period from 1978 through 1987, when I was again at Sherman & Howard, I have been able to locate records of the following activity, although the records are incomplete:

1. *United States v. Rick A. Huff.* I was appointed under the Criminal Justice Act, by the federal district court in Colorado, to represent this defendant on a mail fraud charge. The case went to trial, which lasted two weeks. I was also appointed by the Tenth Circuit to represent this defendant and all co-defendants in their appeals of convictions.

2. *United States v. Thomas Gamble.* This was another Criminal Justice Act appointment to represent a defendant charged with interstate transportation of stolen property. The case went to trial, which lasted a week. I was also appointed by the Tenth Circuit to represent Mr. Gamble on his appeal.

3. *United States v. Jackie Witherspoon.* This was a Criminal Justice Act appointment to represent a defendant accused of interstate transportation of stolen property. The case was resolved by plea.

4. *Paul Nelson v. State of Colorado et al.* The federal district court in Colorado appointed me to represent a state prisoner in a civil rights case under 42 U.S.C. § 1983. Although I had supervisory authority, the bulk of the work was done by associates at Sherman & Howard.

Since coming to Beckner & Nottingham, P.C. in 1987, I have represented one indigent client, Ms. Tina Stratton, in a protracted divorce proceeding which was only recently concluded.

In 1988, I received a *pro bono publico* award from the Mesa County Bar Association for my work on this case.

2. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge

to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion. Do you currently belong, or have you belonged, to any organization which discriminates -- through either formal membership requirements or the practical implementation of membership policies? If so, list, with dates of membership. What you have done to try to change these policies?

1) Denver Athletic Club
1325 Glenarm Street
Denver, CO
member, 6/74 to present
(303) 534-1211

I am told that this club, in the past, *may have discriminated* on one or more of the bases stated. It does not now so discriminate, and it has not, to my knowledge, so discriminated since I have been a member.

2) Denver Law Club
c/o Marion A. Brewer, President
Colorado Counties, Inc.
1177 Grant Street
Denver, CO 80203
(303) 861-4071
member, 10/78 to present

Until approximately seven years ago, this club did not allow women members. It does not now so discriminate; in fact, the immediate past president is a woman. After I joined the club, I consistently supported continuing efforts to change the club's rules and allow women members.

3. Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, did it recommend your nomination? Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and interviews in which you participated).

Senator Armstrong has appointed a committee of five lawyers to recommend candidates for the federal district bench in Colorado. The committee solicited an application from me. I applied and had an extensive interview with this committee. The committee recommended that Senator Armstrong forward my name to the Administration. I had an extensive interview with Senator Armstrong, and he followed the committee's recommendation. I was thereafter interviewed by people in the Department of Justice. During the ensuing process, I have also been interviewed by representatives of

the Federal Bureau of Investigation and the American Bar Association's Standing Committee on the Federal Judiciary.

4. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as asking how you would rule on such case, issue, or question? If so, please explain fully.

No.

5. Please discuss your views on the following criticism involving "judicial activism."

The role of the Federal judiciary within the Federal government, and within society generally, has become the subject of increasing controversy in recent years. It has become the target of both popular and academic criticism that alleges that the judicial branch has usurped many of the prerogatives of other branches and levels of government.

Some of the characteristics of this "judicial activism" have been said to include:

a. A tendency by the judiciary toward problem-solution rather than grievance-resolution;

b. A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals;

c. A tendency by the judiciary to impose broad, affirmative duties upon governments and society;

d. A tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness; and

e. A tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.

I regard the criticism, on the whole, as an appropriate one. The judiciary, alone among the three branches of government, is neither directly responsible to an electorate nor restrained by the necessity of political compromise among various groups or factions. Because they are not restrained by these forces which restrain the other branches, judges may inappropriately use the cases before them as a way of imposing their own views of correct public

policy upon other branches or levels of government. An issue which federal courts must continually confront is how to define and limit their own power so that its exercise does not come to be regarded as an expression of their own personal, unrepresentative predilections.

AFFIDAVIT

I, Edward W. Nottingham, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

October 26, 1989
(DATE)

Edward W. Nottingham
(NAME)

STATE OF COLORADO)
) ss.
COUNTY OF MESA)

Subscribed and sworn to before me this 26 day of October, 1989, by Edward W. Nottingham.

WITNESS my hand and official seal.

My Commission expires: 11-22-89

Notary Public

FINANCIAL STATEMENT

NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS

Cash on hand and in banks	66,838	45
U.S. Government securities—add schedule		
Listed securities—add schedule	16,785	22
Unlisted securities—add schedule	366	00
Accounts and notes receivable:		
Due from relatives and friends		
Due from others	16,814	27
Doubtful		
Real estate owned—add schedule	1,113,000	00
Real estate mortgages receivable		
Autos and other personal property	14,475	00
Cash value—life insurance	2,017	72
Other assets—itemize:		
Retirement Accounts	154,023	44
Investment Partnerships	12,304	80
Miscellaneous (See Schedule)	36,576	56
Total assets	1,434,001	46

LIABILITIES

Notes payable to banks—secured		
Notes payable to banks—unsecured		
Notes payable to relatives		
Notes payable to others		
Accounts and bills due	1,289	55
Unpaid income tax		
Other unpaid tax and interest		
Real estate mortgages payable—add schedule	288,856	33
Chattel mortgages and other liens payable	7,940	74
Other debts—itemize:		
Security Deposits, Rental Property	2,295	00
Total liabilities	300,381	62
Net worth	1,133,619	84
Total liabilities and net worth	1,434,001	46

CONTINGENT LIABILITIES

As endorser, comaker or guarantor		
On leases or contracts		
Legal Claims		
Provision for Federal Income Tax		
Other special debt		

GENERAL INFORMATION

Are any assets pledged? (Add schedule.) NO		
Are you defendant in any suits or legal actions? NO		
Have you ever taken bankruptcy? NO		

EDWARD W. NOTTINGHAM & JANIS E. CHAPMAN

FINANCIAL STATEMENT -- September 30, 1989

Assets:		**Liabilities:**	
Cash:		**Revolving Credit:**	
Savings #1818453	$32,334.43	Mastercard (EWN)	$279.13
Checking #5570934	$76.54	Visa (EWN)	$56.30
Checking #20030939	$1,062.49	AdvanceLine (EWN)	$0.00
Checking #20030942 (Joint)	$403.20	Mastercard (JEC)	$954.12
Savings #40035866 (Joint)	$10,094.55		
Oppenheimer Money Market Fund #200 2000836385	$20,227.44		
Checking #021795 (Joint)	$2,639.80		
Total Cash	$66,838.45	Total Revolving Credit	$1,289.55
	$66,838.45		$1,289.55
Stocks and Bonds:			
Kemper Growth Fund	$4,554.20		
Kemper High Yield	$4,494.34		
Kemper Summit	$4,036.68		
WPL Holdings	$3,700.00		
Gold King Consolidated, Inc.	$366.00		
Total Stocks and Bonds	$17,151.22		
	$17,151.22		
Real Estate:		**Real Estate Mortgages:**	
347 Harrison Street, Denver	$170,000.00	Genesee Land Company	$158,371.71
1260 York Street, Denver	$35,000.00		
Dickson Creek, Eagle County	$200,000.00		
Tract K, Beaver Creek	$500,000.00		
3138 Cloverdale Court, Grand Junction, CO	$123,000.00	Countrywide Mortgage	$97,571.55
21854 Scenic Circle Jefferson County	$85,000.00	Central Bank, San Angelo, TX	$32,913.07
Total Real Estate	$1,113,000.00	Total Real Est. Mortgages	$288,856.33
	$1,113,000.00		$288,856.33
Retirement Accounts:			
Sherman & Howard	$127,436.00		
EWN IRA	$14,477.54		
JEC IRA	$12,109.90		
Total Retirement Accounts	$154,023.44		
	$154,023.44		
Automobiles:		**Auto Loans:**	
280 ZX	$4,125.00		
Honda	$10,350.00	Car Loan (Honda)	$7,940.74

EDWARD N. NOTTINGHAM & JANIS E. CHAPMAN

FINANCIAL STATEMENT -- September 30, 1989

Assets:		Liabilities:	
Total Automobiles	$14,475.00	Total Auto Loans	$7,940.74
	$14,475.00		$7,940.74
Investment Partnerships:			
Carlyle Real Estate	$5,000.00		
Pershing Investment Co.	$0.00		
Boettcher Western	$0.00		
Clark Street Futures Fund	$7,304.80		
Penguin Properties			
Total Invest. Partnerships	$12,304.80		
	$12,304.80		
Life Insurance:			
Mass Mutual 6934566	$285.14		
Mass Mutual 69344581	$234.80		
Northwestern 7917567	$2,297.78		
Total Life Insurance	$2,817.72		
	$2,817.72		
Notes Receivable:			
Paul DeLaughter	$10,043.95		
A. & Luz Martinez	$2,968.92		
Sammy Martinez	$3,801.40		
Total Notes Receivable	$16,814.27		
	$16,814.27	Other Liabilities:	
Miscellaneous:		Secur. Deposits, Rental Prop.	
Beckner & Nottingham Capital	$5,100.00	(347 Harrison Street)	$1,350.00
Sherman & Howard		(1260 York Street)	$250.00
Deferred Accounts	$31,476.56	(21854 Scenic Circle)	$695.00
Total Miscellaneous	$35,576.56	Total Other Liabilities	$2,295.00
	$36,576.56		$2,295.00
TOTAL ASSETS	$1,434,001.46		
	$1,434,001.46		
TOTAL LIABILITIES			$300,381.62
			$300,381.62
NET WORTH	$1,133,619.84		
	$1,133,619.84		

EDWARD W. NOTTINGHAM & JANIS E. CHAPMAN

FINANCIAL STATEMENT -- September 30, 1989

Assets: Liabilities:

ASSETS OF DEPENDENT CHILDREN, OF WHICH EDWARD W. NOTTINGHAM HAS CUSTODY:

Stocks and Bonds:	
Kemper Growth Fund	$9,816.41
Kemper Summit Fund	$8,938.20
Public Service Company of Colorado	$15,527.12
Total Stocks and Bonds of Dependent Children	$34,281.73
NET WORTH, INCLUDING DEPENDENT CHILDREN'S ASSETS	$1,167,901.57

ABA
AMERICAN BAR ASSOCIATION
Standing Committee on Federal Judiciary
1800 M Street, NW
Washington, DC 20036
(202) 331-2210

CHAIRMAN
Harold R. Tyler, Jr.
30 Rockefeller Plaza
New York, NY 10112
FIRST CIRCUIT
Ralph I. Lancaster, Jr.
One Monument Square
Portland, ME 04101
SECOND CIRCUIT
William E. Willis
125 Broad Street
New York, NY 10004
THIRD CIRCUIT
Jerome J. Shestack
Suite 3600
1600 Market Street
Philadelphia, PA 19103
FOURTH CIRCUIT
James A. Howard, Sr.
Suite 322A
6160 Kempsville Circle
Norfolk, VA 23502
FIFTH CIRCUIT
Lloyd Lochridge
Suite 1300
919 Congress Avenue
Austin, TX 78701
SIXTH CIRCUIT
John C. Elam
52 East Gay Street
Columbus, OH 43215
SEVENTH CIRCUIT
Joan M. Hall
Suite 4300
One IBM Plaza
Chicago, IL 60611
EIGHTH CIRCUIT
James W. Hewitt
Post Office Box 80268
1815 Y Street
Lincoln, NE 68501
NINTH CIRCUIT
J. David Andrews
40th Floor
1201 Third Avenue
Seattle, WA 98101-3099
Ronald L. Olson
35th Floor
355 South Grand Avenue
Los Angeles, CA 90071
TENTH CIRCUIT
Arthur D. Melendres
Sunwest Building
Suite 1000
Post Office Box 2168
Albuquerque, NM 87103
ELEVENTH CIRCUIT
Sylvia H. Walbolt
Post Office Box 3239
Tampa, FL 33602
DISTRICT OF COLUMBIA
CIRCUIT
James J. Bierbower
1308 39th Street, NW
Washington, DC 20036
FEDERAL CIRCUIT
John D. Lane
Suite 1100
1666 K Street, NW
Washington, DC 20006
BOARD OF GOVERNORS
LIAISON
Robert MacCrate
28th Floor
125 Broad Street
New York, NY 10004
STAFF LIAISON
Irene R. Emsellem
American Bar Association
1800 M Street, NW
Washington, DC 20036
(202) 331-2210
ABA/NET ABA 461

CONFIDENTIAL

October 23, 1989

Hon. Joseph R. Biden, Jr.
Chairman, Committee on the Judiciary
United States Senate
SD 224
Washington, D.C. 20510-0802

RE: EDWARD WILLIS NOTTINGHAM, JR.
United States District Court for the
District of Colorado

Dear Senator Biden:

Thank you for affording this Committee an opportunity to express an opinion pertaining to the nomination of Edward Willis Nottingham, Jr. for appointment as Judge of the United States District Court for the District of Colorado.

Our Committee is unanimously of the opinion that Mr. Nottingham is Well Qualified for this appointment.

A copy of this letter has been sent to Mr. Nottingham for his information.

Sincerely,

Ralph Lancaster

Ralph I. Lancaster, Jr.
Chairperson

RIL/sm

cc All Committee Members
Edward Willis Nottingham, Jr., Esq.
Barbara Drake, Esq.

EDWARD J. LODGE

Birth:	December 3, 1933	Caldwell, Idaho
Legal Residence:	Idaho	
Marital Status:	Married	Patricia Anne Lodge 3 children
Education:	1952 - 1953	Notre Dame University
	1953	University of Idaho
	1953 - 1954	Boise Junior College
	1955 - 1957	College of Idaho B.A. degree, cum laude
	1957 - 1958	College of Idaho Teaching Certificate
	1958 - 1961	University of Idaho LL.B. degree
Bar:	1962	Idaho
Experience:	1962 - 1963	Smith & Miller Associate
	1963 - 1965	Probate Judge Probate Court for Canyon County
	1965 - 1988	District Judge District Court for the State of Idaho
	1988 - present	U. S. Bankruptcy Judge District of Idaho
Office:	550 West Fort Street Federal Bldg, Box 040 Boise, Idaho 83724 208 334-9270	
Home:	18500 Symms Road Caldwell, Idaho 83605	

To be United States District Judge for the District of Idaho

QUESTIONNAIRE FOR JUDICIAL NOMINEES

I. BIOGRAPHICAL INFORMATION (PUBLIC)

1. Full name (include any former names used).

   Edward James Lodge

2. Address: List current place of residence and office address(es).

   Home: 18,500 Symms Road
   Caldwell, Idaho 83605

   Business: 550 West Fort Street
   Federal Bldg. Box 040
   Boise, Idaho 83724

3. Date and place of birth.

   12/3/33 Caldwell, Idaho

4. Marital Status (including maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es).

   Married
   Patricia Anne Nally
   Media Specialist (Librarian) with four Caldwell Schools
   Caldwell School District No. 132 - State of Idaho

   Woodrow Wilson School
   South 10th Ave. & Linden
   Caldwell, Idaho 83605

   Superintendent's Office
   1101 E. Cleveland Blvd.
   Caldwell, Idaho 83605

5. Education: List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.

   Notre Dame University Sept. 1952 to Jan. 1953
   University of Idaho Jan. 1953 - June 1953
   Boise Junior College Sept. 1953 - Jan. 1955
   Graduated (Business)
   College of Idaho Sept. 1955 to June 1957
   Graduated (Cum Laude) Business and Economics

College of Idaho Sept. 1957 to June 1958
Acquired my teaching Certificate and served as an assistant coach (football)
University of Idaho Sept. 1958 - June 1961
Bachelor of Law Degree LLB

6. Employment Record: List (by years) all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including firms, with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.

Smith & Miller - attorney
April 20, 1962 - June 1963
Probate Court - Probate Judge (Canyon County, Idaho)
June 1963 - Jan. 19, 1965
District Court - District Judge (State of Idaho)
Jan. 20, 1965 - Jan. 6, 1988
U.S. Bankruptcy Court - U.S. Bankruptcy Judge
Jan. 7, 1988 to present

Lodge Land & Livestock, Inc. - Director
Circle Bar Ranch - Director
Lodge Brothers - Partner

7. Military Service: Have you had any military service? If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received.

No.

8. Honors and Awards: List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.

Graduated with honors from College of Idaho (Cum Laude).
Youngest Judge ever appointed to District Court in Idaho.
First Trial Judge recipient of 'Kramer Award' for Excellence in Judicial Administration.
Voted one of top five jurists in the State of Idaho in 1973 in only poll taken of Judges by lawyers. Highest ranking of all Judges for integrity and diligence.
Unanimous choice of Ninth Circuit Judges for U.S. Bankruptcy position. (69 applicants)
Citizen of the Week for the State of Idaho
Three time All-American - High School - Junior College - Small College.
Charter Member, Hall of Fame - Boise State.
Distinguished Alumnus - College of Idaho

9. Bar Associations: List all bar associations, legal or judicial-related committees or conferences of which you are or have been a member and give the titles and dates of any offices which you have held in such groups.

American Bar Association
Idaho Trial Lawyer Association
Idaho State Bar Association
Idaho District Judges Association -
  President--Vice President--Secretary (Middle 1970s approximately.)
U.S. Bankruptcy Judges Association

President of Magistrate Commission for Third Judicial
  District - Selection of new Magistrates 1976 - 1987
Past Board Member of Idaho Shorthand Reporters Association

10. Other Memberships: List all organizations to which you belong that are active in lobbying before public bodies. Please list all other organizations to which you belong.

I am not a member of any organization that is active in lobbying for public bodies per se.
I am sure the American Hereford Association and/or the Elk's Club may lobby from time to time before the public bodies, but I have never been involved in the same with those organizations.

Elk's Club - 33 years
American Hereford Association since approximately 1973
Past President of Parish Council at St. Mary's Catholic
  Church in Caldwell
Past member of Hospital Board at Caldwell Memorial Hospital
  in Caldwell, Idaho
Boise State Athletic Association

As a member of the Bench, I have intentionally stayed away from belonging to civic, charitable and social organizations so as to avoid any appearance of any impropriety should a member appear before the Court.

11. Court Admission: List all courts in which you have been admitted to practice with dates of admission and lapses if any such memberships lapsed. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.

All Courts in the State of Idaho - April 1962
  Probate Court - now Magistrate Court

District Court - (Court of general jurisdiction)
Idaho Court of Appeals
Supreme Court
Federal District Court

I did not practice in front of any administrative bodies which required special admission.

12. Published Writings: List the titles, publishers, and dates of books, articles reports, or other published material you have written or edited. Please supply one copy of all published material not readily available to the Committee. Also, please supply a copy of all speeches by you on issues involving constitutional law or legal policy. If there were press reports about the speech and they are readily available to you, please supply them.

None.

I have been a speaker or panelist from time to time at judicial seminars, but when I left the State Courts, I did not keep any of those materials.

13. Health: What is the present state of your health? List the date of your last physical examination.

Excellent. June 23, 1989

14. Judicial Office: State (chronologically) any judicial offices you have held, whether such position was elected or appointed and a description of the jurisdiction of each such court.

U.S. Bankruptcy Judge Jan. 7, 1988 to present
Appointed by Ninth Circuit for a fourteen-year term.
Jurisdiction - All matters pertaining to the field of bankruptcy.

District Judge for the State of Idaho
Jan. 1965 to Jan. 6, 1988
Initially appointed by the Governor - Elected every four years thereafter;
District Court is a Court of general jurisdiction in both criminal and civil areas of the law. In addition to my duties as a District Judge I was elected by my fellow Judges to serve as Administrative Judge for the Third Judicial District of Idaho for over ten years prior to my retirement. (The District Judges elected the Administrative Judge every two years. He or she is responsible for the administration and management of the Courts in a particular District.)

Probate Judge (Now called Magistrate Court.) June 1963 to Jan. 1965--Initially appointed, then elected.
Court of limited jurisdiction, but handled misdemeanors - juvenile matters - probate hearings - mental petitions.

15. Citations: If you are or have been a judge, provide: (1) citations for the ten most significant opinions you have written; (2) a short summary of and citations for appellate opinions where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings; and (3) citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, please provide copies of opinions.

1) IN THE INTEREST OF CHAD BRIAN THOMPSON, A CHILD UNDER THE AGE OF EIGHTEEN YEARS - Canyon County Case No. L-35925;
110 Idaho 93; 714 P.2d 62

Case discusses whether or not a parent-child relationship can be terminated under Idaho law for neglect of a non-custodial nature.

Magistrate: Stephen W. Drescher
P.O. Box 65
Nampa, Idaho 83653 (208) 467-4479
Attorney for Petitioner: Debra A. Heise
Magistrate
Bonner County Courthouse
Sandpoint, Idaho 83864 (208) 263-6841, Ext. 254
Attorney for Natural Mother: Andrew C. Thomas
Idaho Legal Aid Services
P.O. Box 1116
Caldwell, Idaho 83605 (208) 459-2591
Attorney for Child: Patrick J. Kole
Statehouse, Room 210
Boise, Idaho 83702 (208) 334-2400

2) IN THE MATTER OF THE PETITION OF STEVE B. DEMASTERS AND LINDA SUE DEMASTERS, ADOPTING PARENTS - Gem County Case No. 6603;
112 Idaho 22; 730 P.2d 942

Case discusses the constitutional rights between adoptive parents of an illegitimate child and the rights of the putative father where the natural mother surrendered the baby for adoption shortly after birth, and where the father denies notice, etc.

Magistrate: Stephen W. Drescher
P.O. Box 65
Nampa, Idaho 83653 (208) 467-4479
Attorney for Petitioner: Scott E. Fouser
P.O. Box 460
Caldwell, Idaho 83606 (208) 459-0091
Attorney for Swan: G. Phillip Bernstein
1100 N. cole Road
Boise, Idaho 83704 (208) 376-1015

Attorney for DeBernardi: Roderick D. Gere
P.O. Box 1683
Boise, Idaho 83701 (208) 345-0106

3) TERESA MARIE VOLK, ET AL vs. FIDEL BALDAZO, ET AL - Canyon County Case No. L-32519; 103 Idaho 570; 651 P.2d 11

Case involves a wrongful death claim of an unborn child (fetus)--whether or not statutory language extended to an unborn child. Case of first impression in Idaho.

Attorney for Plaintiffs: William J. Brauner
P.O. Box 1078
Caldwell, Idaho 83606 (208) 467-9281

Attorney for Baldazo: Michael G. Brady
P.O. Box 1398
Boise, Idaho 83701 (208) 345-8400

Attorneys for Shultz: William J. Russell
P.O. Box 1539
Boise, Idaho 83701 (208) 343-5454
Ronald P. Rainey
P.O. Box 25
Caldwell, Idaho 83606 (208) 459-3659

4) THE STATE OF IDAHO vs. JOSE ALPHONSO MARTINEZ - Canyon County Case No. C-4614; 107 Idaho 928; 693 P.2d 1130

Case involves rulings and discussion on issues of

1) Probable cause for stop and arrest;
2) Validity of defendant's arrest;
3) Validity of search of vehicle;
4) Degree and intensity of surveillance;
5) Search warrant requirements;
6) Interception of mail and telephone calls.

Attorney for State: Dennis E. Goff (then Prosecuting Attorney)
District Judge
1115 Albany Street
Caldwell, Idaho 83605 (208) 454-7371

Attorney for Defendant: James C. Morfitt
Magistrate
1115 Albany Street (208) 454-7365

Attorney for Defendant on Appeal: Dan Edwards
Address unknown

5) STATE OF IDAHO, DEPARTMENT OF HEALTH AND WELFARE, EX REL PATRICIA ANN MUNSON vs. HAROLD RAYMOND MUNSON - Canyon County Case No. L-37405

This case involves a legal analysis of a child's rights in a paternity suit where the mother waived her right to child support.

Attorney for State: Dean W. Kaplan
Deputy Attorney General
450 West State Street
Boise, Idaho 83720 (208) 334-5719
Attorney for Defendant: Kenneth F. White
P.O. Box 1099
Nampa, Idaho 83653 (208) 466-3100

6) THE STATE OF IDAHO vs. JORGE BARRERA, AKA JORGE BARRERA VASQUEZ
Canyon County Case No. C-6094

This case involved the issue of perjury.

The Court was asked to determine the standard and quantum of proof necessary to sustain a charge of perjury, and then apply that standard to the facts of this case.

Attorney for State: Richard L. Harris, Prosecuting Attorney
Peggy McMahon, Deputy Prosecuting Attorney
P.O. Box 668
Caldwell, Idaho 83606 (208) 454-7391
Attorney for Defendant: Van G. Bishop
Public Defender
624 3rd St. So.
Nampa, Idaho 83651 (208) 465-5411

7) IN RE GARY DALE ATCHLEY, FDBA COFFEE CONNECTION - Bankruptcy Case No. 88-03211-A

Case discusses whether or not a judgment lien can be voided when it is filed prior to the homestead claimed as an exemption.

Attorney for Debtor: Marc S. Tanner
200 North 4th, Suite 101
Boise, Idaho 83702-6001 (208) 384-0003
Attorney for Loren &
Diana Hollenbeak: Michael D. Gaffney
P.O. Box 4229
Pocatello, Idaho 83701 (208) 233-1113

8) IN RE: GARY R. CRITES; TRUSTEE, LTD. VS. FIRST SECURITY BANK OR IDAHO, N.A. ET AL - Bankruptcy Case No. 87-00869A and Adversary No. 88-0147

Case discusses preferential transfers under Section 547 of the Bankruptcy Code;

2) Sets application to the transfer of a security interest in a motor vehicle filed more than ten days after possession and execution of the loan documents occur;

3) Abandonment and the separate duties of Chapter 13 and Chapter 7 Trustees.

Attorney for Trustee: James A. Spinner
P.O. Box 4883
Pocatello, Idaho 83205 (208) 232-4471

Attorney for First Security Bank:
Craig W. Christensen
P.O. Box 967
Pocatello, Idaho 83204 (208) 232-5911

Attorney for Gary Anderson Auto Sales:
Roger D. Ling
P.O. Box 396
Rupert, Idaho 83350 (208) 436-4717

9) IN THE MATTER OF THE APPEALS OF G & G ASSOCIATES FROM THE BOARD OF EQUALIZATION OF ADAMS COUNTY FOR TAX YEAR 1983 - Adams County Case No. 2479

Attorney for G & G:
Kenneth P. Adler
212 N. 1st Ave., Suite 304
Sandpoint, Idaho 83864
(208) 263-8024

Attorney for County:
Charles R. Kroll
P.O. Box 367
Weiser, Idaho 83672 (208) 549-1652

10) WILLIS L. REA vs. BOARD OF TRUSTEES OF SCHOOL DISTRICT NO. 431, WEISER, WASHINGTON COUNTY, IDAHO - Washington County Case No. 7839

Case discusses due process requirements for termination of a tenured teacher, as well as procedural irregularities.

Attorney for Plaintiff:
Byron J. Johnson
State Supreme Court Justice
451 West State Street
Boise, Idaho 83720 (208) 334-3186

Attorney for Board of Trustees:
Lary C. Walker
P.O. Box 828
Weiser, Idaho 83672 (208) 549-0390

11) DARLENE LACER, ET AL vs. CANYON COUNTY, IDAHO, ET AL - Canyon County Case Nos. L-34170, L-34514 & L-34518

Case involves discussion of privity of contract, breach of warranty, parties entitled to protection and statute of limitations questions in a school bus accident where children were injured in part from structural defects.

Attorneys for Plaintiffs:
David L. Whitney
P.O. Box 26
Caldwell, Idaho 83606 (208) 459-3659
John C. Hepworth
P.O. Box 389
Twin Falls, Idaho 83303 (208) 734-7510
Kenneth F. White
P.O. Box 1099
Nampa, Idaho 83653 (208) 466-3100

James E. Schiller
P.O. Box 21
Nampa, Idaho 83653 (208) 466-7809
Attorneys for Defendants: Ronald M. Morris
Address unknown
Howard Humphrey
815 West Washington
Boise, Idaho 83702 (208) 344-7811
James D. LaRue
P.O. Box 1539
Boise, Idaho 83701 (208) 343-5454

12) IN RE DAVID FRANKLIN BROWN, ET AL - Bankruptcy Case No. 87-03620A

Case of first impression in this district.
The issue is whether the date of filing the original Chapter 13 petition, or the date the case was converted to a Chapter 7, should be the point at which the Chapter 7 estate is determined. The case discusses the controversy that arises because of the differences between the property of the Chapter 13 and Chapter 7 estates.

Attorney for Debtor: Peter Contos
P.O. Box 4886
Idaho Falls, Idaho 83403 (208) 529-3094
Attorney for Trustee: James A. Spinner
P.O. Box 4883
Pocatello, Idaho 83205 (208) 232-4471

See Attachment A for copies of opinions not reported, and answer to Question No. 18 for other significant cases.

16. Public Office: State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.

None.

17. Legal Career:

a. Describe chronologically your law practice and experience after graduation from law school including:

1. Whether you served as clerk to a judge, and if so, the name of the judge, the court, and the dates of the period you were a clerk;

I did not serve as a law clerk.

2. whether you practiced alone, and if so, the addresses and dates;

   I did not practice alone.

3. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been connected, and the nature of your connection with each;

   Smith & Miller, Caldwell, Idaho,
   1962-1963, as an associate.

b. 1. What has been the general character of your law practice, dividing it into periods with dates if its character has changed over the years?

   I practiced with the law firm of Smith & Miller. Mr. Miller is now deceased, and Lawrence Smith has retired and now lives somewhere in Oregon. The firm was later merged and is now known as Gigray, Miller, Downen, Weston & Pasley, South 9th Avenue & Dearborn, Caldwell, Idaho 83606.

   I practiced with the law firm of Smith & Miller from April 20, 1962, until I was appointed to the Probate Court Bench in June of 1963.

   In January of 1965 I was appointed to the District Court Bench and was re-elected every four years thereafter until I retired in January of 1988 to assume my duties as a U.S. Bankruptcy Judge for the District of Idaho. I am presently serving a fourteen-year term in this Court.

   I served as an Administrative Judge for the Third Judicial District, in addition to my duties as District Judge, for ten years prior to 1988.

2. Describe your typical former clients, and mention the areas, if any, in which you have specialized.

   I did not specialize in any particular area of the law and while I had some clients of my own, in both the civil and criminal fields, I spent most of my time working with the senior partners in the preparation and trial of their cases.

c. 1. Did you appear in court frequently, occasionally, or not at all? If the frequency of your appearances in court varied, describe each such variance, giving dates.

Occasionally

2. What percentage of these appearances was in:
   (a) federal courts;
   (b) state courts of record;
   (c) other courts.

State Courts of record	75%
Other Courts	24%

3. What percentage of your litigation was:
   a) civil;
   b) criminal.

Civil	50%
Criminal	50%

4. State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

I really cannot recall, but it would have been very few because I did not practice law that long. I know there was one felony bank robbery case, State of Idaho vs. James Totten, that I was sole counsel on, and I assisted with several others.

I tried several misdemeanor cases.

5. What percentage of these trial was:
   (a) jury;
   (b) non-jury.

Jury	25%
Non-jury	75%

18. Litigation: Describe the ten most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

(a) the date of representation;
(b) the name of the court and the name of the judge or judges before whom the case was litigated; and
(c) the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

My tenure in the practice of law was confined to a period of time between 1962 and 1963. Since that was more than twenty-five years ago, and was limited in time, I have substituted, for cases tried, cases I have presided over in recent years. (See Attachment B)

19. Legal Activities: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe the nature of your participation in this question, please omit any information protected by the attorney-client privilege (unless the privilege has been waived).

Since I have been a Judge for over 26 years, a great deal of my time is spent in negotiating and presiding over settlement conferences. I believe I have been very successful in helping counsel to resolve difficult legal matters that have resulted in settlements. I was the first trial Judge and second recipient in Idaho to receive what is known as the 'Kramer Award' for Excellence in Judicial Administration by Character and Action for my performance on and off the bench.

I have completed the complex litigation and anti-trust courses offered at the National College.

I like to think that, because of my experience and training, the Supreme Court of Idaho has used me out of my district on controversial matters both in the Court and before legislative committees.

I have been recognized for my disposition rate of cases, while at the same time acting as Administrative Judge for the Third Judicial District for the State of Idaho.

II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers clients, or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.

Retirement from State of Idaho (District Judge)
62% of full pay

Present stock owned:		
Albertsons	300 shares	
Idaho Power	200 shares	
Pacificorp	185 shares	
HJ Heinz	429 shares	
Pentron Industries	1000 shares	
Bonds:		
University of Idaho Life Science Building		$10,000.00
Ada Canyon Joint School District 2, Meridian		$20,000.00

2. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these ares of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated.

I do not anticipate any problem based on my current stock holdings, but if it presented itself as a problem, I would take appropriate steps to follow the Code of Judicial Conduct for United States Judges and the Guidelines of the Judicial Conference and divest myself of any such stock holdings as deemed appropriate.

3. Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

No.

4. List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends,

interest, gifts, rents, royalties, patents, honoraria, and other items exceeding $500 or more (If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted there.)

See Attachment A

5. Please complete the attached financial net worth statement in detail (Add schedules as called for).

See Attachment B

6. Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

No. I have been a candidate as a State Judge on a non-partisan basis. Elections were held every four years.

EDWARD J. & PATRICIA A. LODGE AND CHILDREN
ATTACHMENT A
SOURCES AND AMOUNTS OF ITEMS OF VALUE RECEIVED

	1988	1987
Wages - Self:		
State of Idaho	$ 66,890	
State of Idaho	10,308	$55,820
Wages - Spouse:		
School District #132	24,337	24,152
Pension - Self:		
State of Idaho	32,248	
Interest - Joint:		
Canyon Teachers Credit Union	62	124
First Interstate Bank	1,791	2,367
Home Federal S & L	75	
Idaho First National Bank	98	366
Key Bank of Idaho	2,270	39
Metropolitan Life	44	41
Ada-Canyon County Idaho Joint School District #2 Meridian	1,800	1,800
University of Idaho - Bldg. Bond	291	
Interest - Children:		
Canyon Teachers Credit Union	165	132
Idaho First National Bank	595	447
Dividends - Joint:		
Merrill Lynch	1,224	1,497
Albertsons	50	
Dividends - Children:		
Merrill Lynch	4,812	4,425
Sale of Livestock - Joint	687	8,338
Sale of Trailer - Joint		2,700
Distributions from Closely Held Family Businesses:		
Lodge Cattle Co., Inc. - Separate	25,000	25,000
Lodge Bros. Ptshp. - Separate - Cash	81	
Estimated value of stock in Lodge Land & Livestock, Inc. distributed by the Partnership	143,780	
Gift from Mother to Self	10,000	10,000
Gift from Mother to Children	3,000	3,000
Gift from Self & Spouse to Children	3,000	3,000

ATTACHMENT B

EDWARD J. & PATRICIA A. LODGE AND CHILDREN

FINANCIAL STATEMENT

NET WORTH

AS OF AUGUST 15, 1989

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS			
Cash on hand and in banks	88	785	
U.S. Government securities—add schedule			
Listed securities—add schedule	143	523	
Unlisted securities—add schedule	505	000	
Accounts and notes receivable:			
Due from relatives and friends			
Due from others			
Doubtful			
Real estate owned—add schedule	310	000	
Real estate mortgages receivable			
Autos and other personal property	50	000	
Cash value—life insurance	8	000	
Other assets—itemize:			
IRA - Self	14	490	
IRA - Spouse	15	482	
Total assets	1,135	280	

LIABILITIES			
Notes payable to banks—secured			
Notes payable to banks—unsecured			
Notes payable to relatives			
Notes payable to others			
Accounts and bills due			
Unpaid income tax			
Other unpaid tax and interest			
Real estate mortgages payable—add schedule	59	000	
Chattel mortgages and other liens payable			
Other debts—itemize			
Total liabilities	59	000	
Net worth	1,076	280	
Total liabilities and net worth	1,135	280	

CONTINGENT LIABILITIES			
As endorser, comaker or guarantor	Mortgage Above		
On leases or contracts	N.A.		
Legal Claims	N.A.		
Provision for Federal Income Tax	N.A.		
Other special debt	N.A.		

GENERAL INFORMATION			
Are any assets pledged? (Add schedule.)	Mortgage Above		
Are you defendant in any suits or legal actions?	NO		
Have you ever taken bankruptcy?	NO		

EDWARD J. & PATRICIA A. LODGE AND CHILDREN
ATTACHMENT TO FINANCIAL STATEMENT OF NET WORTH
AS OF AUGUST 15, 1989

ASSETS:	
Cash in Bank:	
First Interstate - Money Market Account - Joint	$ 12,387
Key Bank - Checking - Self	3,523
Key Bank - Checking - Joint	12,070
Key Bank - Checking - Joint	5,327
Key Bank - C.D. - Self	21,067
Key Bank - C.D. - Children	21,220
Key Bank - Savings - Children	3,128
Canyon Teachers Credit Union - Self	306
Canyon Teachers Credit Union - Spouse	2,195
Canyon Teachers Credit Union - Children	3,287
Merrill Lynch CMA - Joint	4,275
Total	$ 88,785
Listed Securities:	
Ada-Canyon County Idaho Joint School Bond - District #2 Meridian - Joint	$ 20,000
University of Idaho - Bldg. Bond - Joint	10,000
Albertsons - 320 shares - Joint	16,064
Idaho Power - 200 shares - Joint	5,625
Pacific Corp. - 200 shares - Joint	8,275
H.J. Heinz - 429 shares - Joint	25,794
Pentron Industries - 1000 shares - Joint	375
M.L. Federal Securities Trust SBI - Children	57,390
Total	$ 143,523
Unlisted Securities: One-fourth interest	
Lodge Cattle Co., Inc. - Separate	$ 130,000
Lodge Land & Livestock, Inc. - Separate	175,000
Lodge Brothers Partnership - Separate	200,000
Total	$ 505,000
Real Estate Owned:	
Residence and 40 acres - Canyon County, Idaho - Joint	$ 200,000
20 Acres dry ground - Canyon County, Idaho - Joint	40,000
50% Interest in land, house, barn and vineyard - Spouse	70,000
Total	$ 310,000
LIABILITIES:	
Real Estate Mortage Payable:	
50% of Mortgage on land, house, barn and vineyard - Spouse	$ 19,000

III. GENERAL (PUBLIC)

1. An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

   I have been a Judge for over twenty-six years so I have not had an opportunity to represent the disadvantaged as such. However, as a Judge, I have worked with the Bar Associations in setting up 'pro bono' and legal aid services to represent the disadvantaged.

2. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion. Do you currently belong, or have you belonged, to any organization which discriminates -- through either formal membership requirements or the practical implementation of membership policies? If so, list, with dates of membership. What you have done to try to change these policies?

   Elk's Club - 33 years

   I probably only go to the Elks Club once or twice a year and have never attended their business meetings. To my knowledge, discrimination on a local level has never been a problem in this area.

3. Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, did it recommend your nomination? Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and interviews in which you participated).

   No selection committee.

   I applied by writing to our Senior Senator, James McClure, and informing him of my interest. I supported my application by letters of recommendation from people in all walks of life, leaders in the community, the legal profession and the public segment.

   When I applied for the U.S. Bankruptcy position, I was interviewed by a selection committee composed of a Ninth Circuit Judge, Blaine Anderson, a Federal District Judge, Marion Callister, the Dean of the Idaho Law School, Sheldon Vincenti, a Ninth Circuit Lawyer Representative, William Holifield, the President of the Fourth District Bar Association, Thomas A. Banducci, and the Clerk of the Federal District Court, Jerry Clapp. I was then interviewed by five members of the Ninth Circuit Court.

For the Federal District Court, I have been interviewed by the Justice Department of the United States, the Federal Bureau of Investigation and the American Bar Association.

4. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as asking how you would rule on such case, issue, or question? If so, explain fully.

No.

5. Please discuss your views on the following criticism involving "judicial activism."

   a. A tendency by the judiciary toward problem-solution rather than grievance-resolution;
   b. A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals;
   c. A tendency by the judiciary to impose broad, affirmative duties upon governments and society;
   d. A tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness; and
   e. A tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.

The function of the Court is not to make the law, but to interpret the same and then apply the law to the facts of the case before it. Problem-solution, rather than grievance-resolution, usually requires going beyond the issues involved in a particular case and often results in the Court drawing conclusions that may not be supported by the evidence. When legal premises are created or expanded to support said conclusions, the Court is acting in a legislative capacity and in violation of the Constitution. Likewise, the Court exceeds its intended function when it employs the individual plaintiff's case as a vehicle for the imposition of far-reaching orders to broad classes of individuals. The Court lacks input of those affected by such orders; it lacks information on the broad ramifications such an order may have and could be put into a position of trying to enforce an order that may not be binding. In such instances the credibility and image of the Court is then damaged.

The Courts should encourage easy access for litigants and allow controversies to be heard on their merits; however, when a Court loosens jurisdictional requirements such as standing and ripeness, it gives to parties rights it would not otherwise have. Loosening such requirements may involve substantive issues which are a legislative function, not that of the Court. The Court's primary function is to resolve disputes and bring finality to the controversies before it. The original meaning of the Constitution is very clear on the separation of powers concept. While there are checks and balances by each of the three branches of government, they do not entail administrative encroachments on one another. The Constitution is a living document in the sense that some of the language used was intentionally broad and imprecise so as to deal with changing times and conditions. However, amendments to the Constitution were necessarily more restrictive, and the procedure for amending the Constitution was clearly spelled out in Article V. The Courts, as upholders of the law, should respect this procedure.

AFFIDAVIT

I, Edward J. Lodge, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

Edward J Lodge

Subscribed and sworn to before me this 14 day of ~~August~~, September
1989.

Glenda Longstreet
~~Notary Public for Idaho~~
~~Residing at~~ __________
~~My Commission expires~~ __________
Deputy Clerk
U.S. District Court

ABA
AMERICAN BAR ASSOCIATION
Standing Committee on
Federal Judiciary
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ABA/NET ABA 461

CONFIDENTIAL

October 31, 1989

Hon. Joseph R. Biden, Jr.
Chairman, Committee on the Judiciary
United States Senate
SD 224
Washington, D.C. 20510-0802

RE: HON. EDWARD J. LODGE
United States District Court for the
District of Idaho

Dear Senator Biden:

Thank you for affording this Committee an opportunity to express an opinion pertaining to the nomination of Judge Edward J. Lodge for appointment as Judge of the United States District Court for the District of Idaho.

Our Committee is unanimously of the opinion that Judge Lodge is Qualified for this appointment.

A copy of this letter has been sent to Judge Lodge for his information.

Sincerely,

Ralph Lancaster

Ralph I. Lancaster, Jr.
Chairperson

RIL/sm

cc All Committee Members
Hon. Edward J. Lodge
Barbara Drake, Esquire